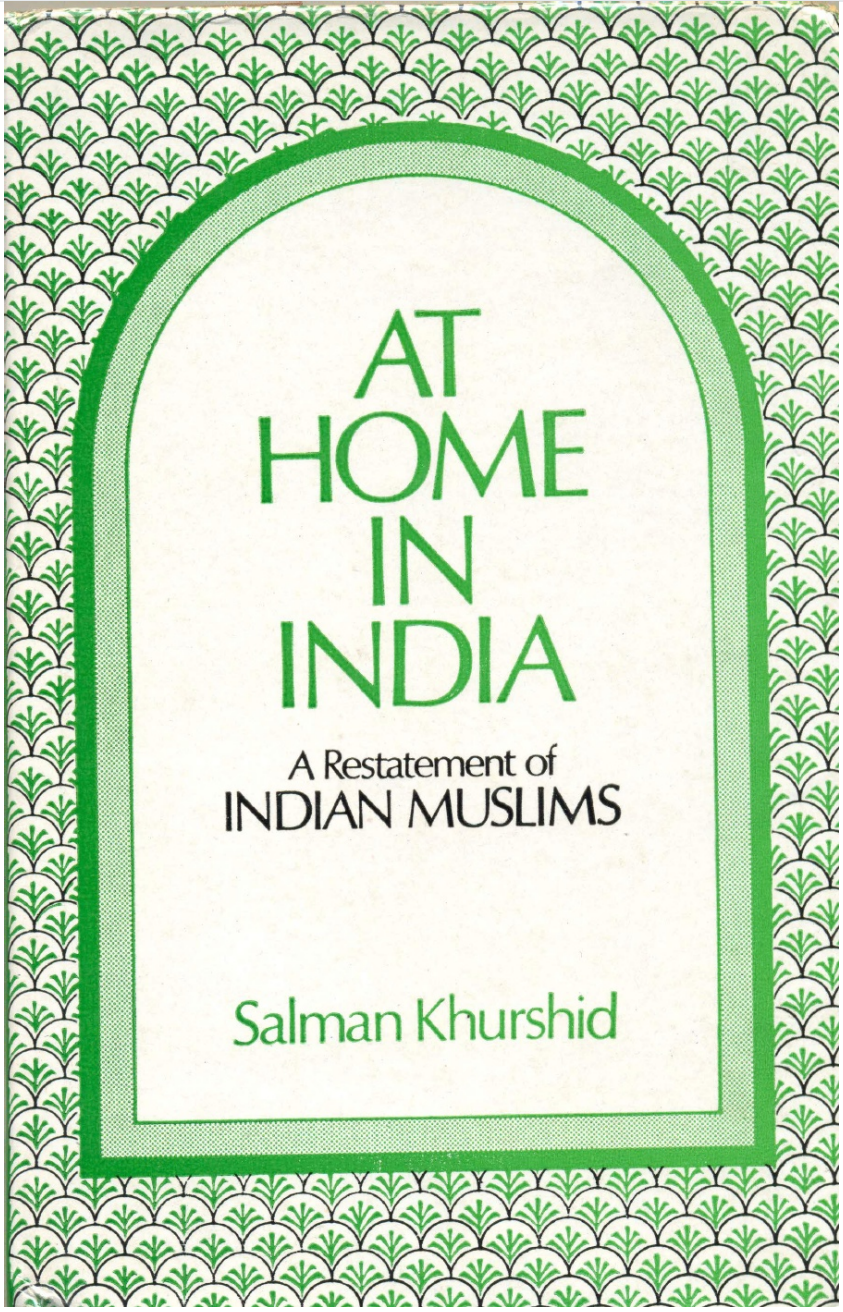
AT
HOME
IN
INDIA
A Restatement of
INDIAN MUSLIMS
Salman Khurshid

Indian Muslims, though individually very expressive, have somehow failed to articulate a political strategy. Their leaders too have been conspicuously reticent. But an effective theory of Muslim rights in Indian democracy cannot be understood with an appreciation of the theoretical basis of equality and minority rights. Indeed respect for the Muslim claim can easily be mistaken for appeasement. This book purports to examine this theme and the questions which arise—Do Muslims need a Muslim leader? Why is there no such leader? Can Muslims resolve the conflict of progress and conformity? Is there a separate Muslim view?

At Home in India is an expression of public and private impressions about arguments and perspectives applied to Indian Muslims, their hopes and aspirations, their concern for cultural integrity and their exploitation. This restatement attempts to give the Muslim citizen a voice to claim a contribution in India's past, present and future.

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A Restatement of INDIAN MUSLIMS

Salman Khurshid

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For

LOUISE KHURSHID

without whom there
would be no home.

PREFACE

What India has experienced since the unveiling of the *Shah Bano* judgment controversy and the *Babari Masjid/Ram Janambhoomi* conflict in Ayodhya is, in a sense, both the Preface and the Epilogue to this book. These two controversies also reflect the two ends of the spectrum of the strained accommodation between India's permanent majority and a minority which probably outnumbers the population of most countries in the world. Certainly amongst Muslim countries India figures third after Bangladesh and Indonesia. Eighty million people normally cannot and should not be ignored. Of course no one can seriously question the secular character and convictions of Indian society. But even in an imperfect world a permanent quest for improvement is imperative for civilization. The extent of endeavour involved and the success achieved need to be monitored from time to time.

Babari Masjid, though it seems to have placed northern India, especially Uttar Pradesh, in a turmoil, and for which passions on all sides are running at a record high, is in real terms less of a problem than *Shah Bano. Babari Masjid* is about an irrational dispute, both about history as well as about the present. But *Shah Bano* is about a fundamental disagreement about how different communities perceive the concept of justice and a just system of laws. Today the difference of opinion has surfaced in a matter which is easily disguised as an issue of women's liberation. But if the basic difference in perception remains, many other issues will emerge very soon.

Shah Bano has done several things. It has shown how difficult it is for a Muslim politician to keep his head above the water of oblivion. It has shown that the cake to be shared between Muslim leaders is too small to be of much use to most of them. It has shown that after hundreds of years of living together, Hindus and Muslims are incredibly ignorant about each others' religious beliefs and customs. It has shown that we still have to figure out a widely acceptable notion of secularism, accommo-

dating social and legal pluralism. It has given some influential scribes an opportunity to raise serious queries not only about Indian Muslims but also about Islam. Suddenly, one form of communalism has become respectable. This might prove to be far more dangerous than the communal violence which has periodically shamed and shocked us all.

To top it all, a seemingly conventional Muslim politician, Arif Mohammad Khan, has taken upon himself to rewrite the charter of Muslim aspiration. Whatever may have been the immediate calculations, Arif Mohammad Khan certainly did depart from political positions he had adhered to throughout his enigmatic career. Having acquired instant heroism for innumerable non-Muslims and some outspoken Muslim radicals, Arif Khan seems to have launched a 'punish or perish' campaign against his opponents, especially Z.R. Ansari, and some young Muslims who have questioned his *bona fides*. What this intercine hostility will result in for the Congress party is anyone's guess but its unwholesome impact on community relations and national harmony is all too obvious.

India is gripped in a multitude of conflicts and contradictions as political jargon begins to accommodate a new century. But even as we contemplate the pleasures and problems of a new age, we have suddenly been forced to reexamine certain fundamental relationships which, since the days of our Founding Fathers, we have taken for granted—the rights of a minority; the privileges of Scheduled Castes and Scheduled Tribes. As a nation, we cannot run away from these questions, no matter how unpleasant the exercise becomes.

In my own way I have attempted to search for some answers concerning Muslims of India. The exercise began long before I thought of writing this book. I encountered scepticism, disbelief, enthusiasm and some amazement. But I do believe that a restatement of the Indian Muslims' position is called for.

SALMAN KHURSHID

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Chapter One

BEYOND REASONABLE DOUBT

This book is about some Indians. Indians amongst whom, by nature and by choice, I find myself.

The book is a public statement about personal impressions of a public matter. It is, in a sense, an attempt at a Muslim restatement. It does not pretend to be a scholarly work or indeed purport to undertake an exercise to prove a state of affairs with the help of copious statistics and profound disputations. Of course the task would be made considerably simpler if it relied upon statistics and figures which often form the cutting edge of political arguments. Even with the knowledge that there are ample statistics available, though not easily, to establish beyond reasonable doubt that the Muslims of India may have received far less than their just deserts, the emphasis here must remain on a general response to reality. The essential point is not only that there is a cause for complaint but also that the cause is felt intensely. Even in the absence of an objective cause a widespread feeling of restlessness in a large group like Muslims calls for attention. It can arguably be said that such a response may, to an extent, be subjective. Of course it would be folly to allow it to rest at a level of subjectivity. Though no accountability to any external master is in order, an internal endeavour to find objective explanations of the intuitive reaction is our intellectual imperative. Such an endeavour will certainly be associated with this restatement.

A disclosure is essential at the very outset. This is the statement of a young Muslim born to an independent nation. I have not suffered the characteristic disadvantages of being born a Muslim—no claims of conservatism to hold me back from acquiring a competitive education; no selfconsciousness to hold me back from claiming the best opportunities to be offered by a country on the verge of a major technological leap; no insecurity and fear of a community ravaged by communal strife. On the

other hand, there has probably been no occasion for enjoying the special benefits which an aggressive minority is often able to procure for itself from time to time in a constitutional democracy. But the fact remains that any sensitive person can sense the experiences of the social group he or she belongs to. I discovered the silent suffering of my community over a long period and each discovery refurbished my resolve to at least express its expanse and intensity, if not contribute, in some way, to alleviate it.

It is very easy to be misunderstood in the undertaking of an exercise such as this. We, as a nation, have either not entirely become accustomed to the idea of a minority community expressing its hopes, aspirations, apprehensions and disappointments through its own chosen spokesman or, indeed, it has been such a long time since somebody last did that for Muslims that an attempt to do so now comes as a rude and offensive gesture to the majority community. That is not to say that these matters have not been voiced at all. The trouble is that the only earnest and unrestricted endeavour in this matter has been by a handful of national leaders whose patronage has been immensely helpful but, at the same time, has deprived the Muslim community of the vitality of selfexpression for which there can be no substitute. I certainly propose to challenge the spurious contention, made by some Muslims as well, that identity should be underplayed. I will also show that identity does not have an inevitable consequence of division.

There is certainly no reason to believe that everything said here, or for that matter anywhere else, by a Muslim citizen, spokesman or leader is necessarily completely true. The important thing is to accept the right of a Muslim to freely express what he feels about himself and matters which reflect upon his welfare. The most critical problem faced by Muslims is, indeed, the matter of unselfconscious expression of hopes and disappointments. What is it, after all, which reduces the responses to every thoughtful proposition about Muslims to two contrasting positions: one, that of the average Muslim praising it as an act of extraordinary 'courage', and the other a somewhat puzzled query about how an otherwise respectable and rational person could surrender his or her good sense to some form of

'fundamentalism' or 'communalism'? Why can't a Muslim make a statement which is taken at face value?

Ignorance about Muslims in our country is alarming, considering that Muslims and Hindus have lived together for centuries. Not so many years ago, when I was at school in Delhi, my young schoolmates called me 'mullah'. Some indeed had an impossible time trying to distinguish a Muslim from a mullah and the latter from their favourite north Indian cuisine 'murg musallam'! More recently, one person asked my sister if she did not eat pork because the pig was sacred!

Of course my schoolmates have long outgrown the unsavoury vocabulary of a Delhi childhood. But then they have been through the best education in the country. So many others, stagnating mentally, will never be able to take Muslims off their imaginery menu cards! Ignorance of course has variety and degree. The young Punjabi school children coming from homes of older people uprooted from West Punjab, what is now Pakistan, may be excused. But what does one make of an Indian Supreme Court judge who asserts his constitutional right, nay duty, to interpret and apply provisions of the *Quran*? "I can understand the *Quran* as well as the next man. When I was called upon to decide a case of the *Quran,* I called the Pakistan Embassy and they sent me a copy of the *Quran*", was the proud declaration of the learned member of the Bench made at a Law Institute seminar. There are almost one hundred million Muslims in India. Many of them live in Delhi. Two of the world leading centres of Islamic theology are in India. Some of the most exquisite copies of *Quran* have been printed in India. Some leading commentaries and translations are Indian. The Supreme Court has had at least one sitting judge for over twenty years who is a Muslim. The Supreme Court library is the best law library in the country. Yet a Supreme Court judge thinks of Pakistan when he thinks of the *Quran*. And untutored Muslim youths are despised for celebrating Pakistan's victories in international sports events.

It is certainly not the case argued here that Muslims are totally alienated from the mainstream of Indian society. If that were so two Muslim Presidents of India, two Muslim Chief Justices of India, the chief of the Union Public Service Commission, the

chief of the Air Force and several senior ministers and state chief ministers would not have occupied seats of national eminence; Pataudi and Zafar Iqbal would not have led Indian national sides in cricket and hockey; Dilip Kumar and Meena Kumari would not have entralled millions of cine fans; Akbar Ali Khan and Amjad Ali Khan would not have enchanted mixed audiences; Begum Akhtar could not have made the Urdu ghazal a common heritage.

They were not just men and women of straw either. Most of them have left a lasting impression on the minds of Indians and on the pages of history. But just as a woman prime minister does not automatically and inevitably guarantee emancipation of women, a Muslim in power or eminence does not inevitably ensure justice for all Muslims. Indeed, much of the complaint of the Indian Muslims is quite rightly directed at their own leaders rather than at other people. Muslim leaders, in politics and in other spheres, have drifted between being content at satisfaction of expectations at a personal or a micro level and conceiving devices to defeat any possibility of a competing leader being able to expand the area of expectation. When you fail in a secular society, it is not because the state discriminates consciously but because internal weaknesses become a fertile recipient for unconscious failures to provide for a minority. You fail because you are taken for granted.

One important distinction must indeed be noticed even in the matter of failures. If Muslims have been truant or failed to exert themselves to reasonable levels, it is only in matters which concern their own welfare and seldom, if ever, is it a matter of national honour or desire. Brigadier Osman and Havaldar Abdul Hamid were not decorated for reasons of policy. They were honoured for valour which must surpass all parallels because they fell to bullets which were fired with the call of *jehad*. How spurious then does Arun Shourie's acid commentary on Islam become! He uses the mandate of *jehad* in the *Quran* to prove the alleged absurdity of adhering to Islamic precepts in a modern society. But who understands *jehad* better, the men who died defending their homes against their brethren who had turned hostile or cynical commentators in their snug studios in academia or newspaper offices? Must more men die

to prove what Islam means to Indian Muslims?

This book is an attempt to show how implicitly or explicitly Indian Muslims have to prove allegiance to a state and a system. It is an attempt to show how absurd this is. But, most of all, it is an attempt to uncover the perverse motives of clever men, amongst Muslims and non-Muslims, who have relentlessly and ruthlessly exploited a Partition not of our seeking. It is an attempt to establish the technique and strategies of exploitation.

This book is, ultimately, a restatement on behalf of Indian Muslims—a restatement which proceeds on the premise that we are not prepared to be selfconscious or obstinate; we want to be selfreliant and selfassured; we want to be what we are—Indians. Maulana Mohammed Ali's last speech in London in 1930 captures the incontrovertible commitment:

> I have a culture, a polity, an outlook on life—a complete synthesis which is Islam. Where God commands, I am a Mussalman first, a Mussalman second and a Mussalman last, and nothing but a Mussalman. But where India is concerned, I am an Indian first, an Indian second, an Indian last, and nothing but an Indian.

If someone is unable to understand Maulana Mohammed Ali's pronouncement, I am afraid he will never understand Indian Muslims. And, therefore, he will never understand India, his vocal patriotism notwithstanding.

LIBERAL CONUNDRUM: THEORY OF JUSTICE

Lord, they have not understood,
Nor will my sentiments understand,
Give them another heart,
If to me you do not another tongue withstand.

Mirza Ghalib

'Liberalism' is not always adequately understood, not to speak of being passionately felt by people in India. Amongst the better informed and those passing off as 'intellectuals' a category which encompasses a variety of 'sinners' including journalists, to be 'liberal' at best means to be tolerant. Thus parents of a girl born upper class or caste Hindu are accepted to be 'liberal' if they do not cause impediments in her free choice of a husband from another caste or community. In a more colloquial sense, 'liberal' is an euphemism for 'forward' or morally somewhat uncommitted person. 'Liberal' is also to be contrasted with 'progressive', or a person with a left wing pretence to life, though not necessarily Marxist.

A Muslim restatement cannot be understood, even less accepted, unless the true meaning of 'liberalism' as well as the philosophical basis of a liberal approach to minorities is fully appreciated. Two major writers of our times have provided a persuasive, powerful argument and explanation of modern liberalism. But they have yet to find a wide readership in India, almost a decade after they swept away the amoralistic positivist intellectual cobwebs of major American and European universities. John Rawls' *A Theory of Justice* and Ronald Dworkin's *Taking Rights Seriously* and its sequel *A Matter of Principle* have together provided a compelling structure of liberal analysis. Rawls in his brilliant conception of the 'Original Position' postulates a veil of ignorance—society in a state of complete ignorance about its collective and individual capacities and provision sets forth to devise its fundamental rules of justice to

govern itself. The principles which emerge are familiar to free people everywhere instinctively or by experience:

1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for all; and
2. Social and economic inequalities are to be arranged so as to be, first, reasonably expected to be of the greatest benefit of the least advantaged and, secondly, attached to positions and offices open to all.

In other words, if people in a state of perfect objectivity judge the fairness of a position they would use principles such as these. This presupposes certain natural proclivities of human nature such as desire for maximum freedom and general averseness towards risks in "take all or lose all" situations, and absence of motivational postulates such as altruism, etc. familiar to social science. The basic logic would be that real life people disagree on moral principles because they have conflicting interests. If we put them into a situation where these conflicting interests cannot influence them, they will arrive at a perfectly rational agreement.

Dworkin explains the validity of the Rawlsian principles on an inherent underlying equality of the 'Original Position' Every person is equal in knowledge and information about desired things in life. Furthermore, every person is equal in ignorance about what exact attributes his or her personality would, in due course, be endowed with and the resources which would be at his or her disposal. This exchange in a position of such equality provides a sound basis for negotiating a social arrangement of substantive equality even if perhaps some superficial aspects of the arrangement look uneven in real terms.

Liberalism for Dworkin and Rawls becomes a continuum of initial equality and continuing equality in theory. To the extent that reality differs from the theoretical basis, devices such as progressive taxation, preferential treatment, state support and subsidy—all as a matter of obligation, not simply a preferred policy—become imperative as correctives. Liberalism is also the inherent respect of the individual as an individual. Without mutual equal respect a concept of exchange is meaningless. That

becomes the core of equality.

That is a pretty attractive model for a liberal. But it is still inadequate for answering certain fundamental questions raised about the rights of minorities. For instance, people often argue that at best the right of a Muslim may be to receive an equal share of resources from the state. That it does not include an inherent obligation on the state to allow a Muslim to live his life as he pleases. Dworkin grasps this distinction as being crucial to liberalism:

> What does it mean for the government to treat its citizens as equals? That is, I think, the same question as the question of what it means for the government to treat all its citizens as free, or as independent, or with equal dignity. In any case, it is a question that has been central to political theory at least since Kant.
>
> It may be answered in two fundamentally different ways. The first supposes that government must be neutral on what might be called the question of the good life. The second supposes that government cannot be neutral on that question, because it cannot treat its citizens as equal human beings without a theory of what human beings ought to be. I must explain that distinction further. Each person follows a more-or-less articulate conception of what gives value to life. The scholar who values a life of contemplation has a conception; so does the television-watching, beer-drinking citizen who is fond of saying "This is the life," though he has thought less about the issue and is less able to describe or defend his conception.
>
> The first theory of equality supposes that political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life. Since the citizens of a society differ in their conceptions, the government does not treat them as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or more powerful group. The second theory argues, on the contrary, that the content of equal treatment cannot be independent of some theory about the

> good for man or the good of life, because treating a person as an equal means treating him the way the good or truly wise person would wish to be treated. Good government consists in fostering or at least recognising good lives; treatment as an equal consists in treating each person as if he were desirous of leading the life that is in fact good, at least so far as this is possible.

In pragmatic terms, what does this respect entail? First, to amplify the concept of respect one has to consider the concept of rights, for respect is but a special type of right or a bundle of rights. Dworkin explains a crucial distinction thus:

> Arguments of policy justify a political decision by showing that the decision advances or protects as a whole. The argument in favour of a subsidy for aircraft manufacture, that the subsidy will protect national defence, is an argument of policy. Arguments of principle justify a political decision by showing that the decision respects or secures some individual or group right. The argument in favour of anti-discrimination statutes, that a minority has a right to equal respect and concern, is an argument of principle.

Since a particular decision can be taken for two clearly distinguishable reasons as well as for overlapping principles and policies, if one is not very careful attributing the wrong reason can easily undermine the prospects of the decision as a precedent in creating a structure of compatible obligations. But given that there are some people at least who would not find it difficult to perceive the difference, the next step must necessarily be to identify the kind of rights people have. The paucity of people who can distinguish or the actual burden involved in distinguishing reasons cannot be used as an argument against the justification of the difference.

A familiar example will help. In the Indian Constitution, rights enumerated as Fundamental Rights are Equality, Freedom of Speech and Expression, Peaceful Assembly, Associations and Unions, Movement and Residence throughout the country, Occupation, Profession or Trade. (These are restricted to a

citizen of India only.) Other rights cover other persons as well and include protection of life and liberty, protection against exploitation by way of forced labour, freedom of religion and protection of cultural and educational rights of linguistic and cultural minorities. In essence, the rights together ensure a person's equal and fair participation in the decisions of his or her society about how the lives of its members should be shaped. Curiously, there is a glaring gap—there is no fundamental right to vote, without which most of the rights that have been enumerated could well become illusory. Presumably if such a right had been included here, the Supreme Court's decision in the infamous *Habeas Corpus* case of the Emergency may well have been different. In that case the Court had, in what seemed pragmatic at that time, accepted the abrogation of Fundamental Rights during the period of internal Emergency which also entitled Parliament to extend its life.

In contrast to the Fundamental Rights are the Directive Principles of State Policy—broad and general postulates for a better and more just society but which do not create any enforceable rights. In recent years the Supreme Court has made attempts to use Directive Principles as the precipitate for enforcing rights not thus far enforced or even for creating new rights. Being principles, in one sense, Directive Principles may have a different character than ordinary Policy but juristically they are still distinguishable from Rights based principles.

According to Dworkin the true liberal cannot choose between the scholar's view of life and the television addict in order to decide the preferred view for the purpose of providing support or recognition, all other things being the same. This view may seem startling at first glance in a developing society but it is the inevitable corollary of liberalism. The right to be wrong becomes a basic tenet of a liberal system. Short of that the drawing of a line between the right to do something and the right thing to do becomes arbitrary. Preference for one particular view of life would amount to disrespect for the other view. The actual cost of desires is a matter to be worked out by schemes which do not concern us at present.

Dworkin then proceeds to the other impediment to implementing liberalism:

> Democracy is justified because it enforces the right of each person to respect and concern as an individual; but in practice the decisions of a democratic majority may well violate that right, according to the liberal theory of what the right requires. Suppose a legislature elected by a majority decides to make criminal some act (like speaking in favour of an unpopular position, or participating in eccentric sexual practices), not because the act deprives others of opportunities they want, but because the majority disapproves of those views or that sexual morality. The political decision, in other words, reflects not just some accommodation of the *personal* preferences of everyone, in such a way as to make the opportunities of all as nearly equal as may be, but the domination of one set of *external* preferences, that is, preferences people have about what others shall do or have. The decision invades rather than enforces the right of citizens to be treated as equals.

In addition to the problem of legitimate expression of choice there is also the additional feature in the case of minority rights that their claimants are a permanent minority. In most other issues in a democracy there is at least a theoretical possibility of a minority becoming a majority. This cannot be the case for Muslims in India.

It is to eliminate these dangers that a Bill of Rights becomes essential. Thus, such a Bill purports to estimate the basic ground rules necessary to ensure fairness in decision-making. The exact nature of these rights may well vary from time to time but experience tells as that there is a virtual world-wide consensus on a substantial number of these rights in a liberal democracy. Unfortunately for us, there are serious shortcomings on both counts in our routine political responses. The most distressing violations of liberal norms are unwittingly made by eminent leaders of liberal tradition in the country, which includes some very eminent lawyers and jurists. It is arguable that these opinion makers and citizen leaders are closer to utilitarian libertarianism than the liberalism unfolded here. And utilitarianism, though initially looking to individual pleasure in order to arrive at an aggregate, has little time for the individual once the

sums of pleasure and pain are done. Perhaps the socialistic dimension of the Indian Constitution, combined with the Directive Principles of State Policy, which are essentially the four corners of welfare ideology of a Fabian society, has encouraged the belief that the aggregate good of the total members of Indian society provides the conclusive measure of good of an individual. Furthermore, their concern is for greater economic freedom and its concomitant standardisation of conduct based on market realities. Modern capitalist society maximizes utility and efficiency by producing identical goods for identical persons—the vast stores of Europe and America are a living example of this phenomenon. When politics begins to look like economics in these systems, liberalism takes a back seat. A utility based analysis of rights or one which relies upon unrestricted capitalism has no place for minorities.

A curious insight into the liberal dilemma and pseudo liberal distractions was unveiling itself in the warmth with which certain vociferous critics of Mrs Gandhi's government had showered praise on the Congress party and its incumbent administration. When the high priest of Indian capitalism, Nani Palkhivala, applauded a Congress party budget as the best since Independence, the obvious question is: Was the fight really about the budget and not about civil liberties? Few Indian politicians can really claim to equal the record of Mrs Gandhi on matters of civil rights and total freedom in spite of the much disliked Emergency. Indeed, the sniping at Mrs Gandhi began with her *Garibi Hatao* election campaign of 1971 when "socialism' was given a cutting edge in Congress party programmes and manifesto. Mrs Gandhi reacted to the combination of industrial non-cooperation and other less obvious pressures by imposing the Emergency. That gave her opposition a platform they desperately needed. Liberal politics was not ever at issue. So if the same groups today express an inability to be sympathetic to the Muslim cause it is not a case of an unmeritorious brief getting short shrift. It is also not a case of inconsistency in the liberal approach. It is simply an indication of the flaws in this form of liberalism.

Libertarians bother with civil liberties only to the extent that it serves in protecting the market. They have no concern for

civil liberties as an independent attribute of human dignity and respect for the individual. Invariably their responses are different from the liberal approach.

A person reacts to situations and propositions in a vaguely systematic manner if one's approach is rational. It is not that every reaction is preceded by a quick check on the loadstone of ideology. But if a person has a consistent rationale or ideological approach the spontaneous reaction is broadly guided by that approach. But amongst liberals, as opposed to progressives or conservatives, the response has to be continuously tested against basic principles of liberalism because positions which might initially seem preposterous will, upon careful scrutiny, turn out to be architypical cases of liberal protection. In other words, it is the liberal predicament to allow, perhaps encourage, advancement of causes which might otherwise have very little appeal on other grounds, such as aesthetics, popular morality or public policy.

This restatement will fail if it cannot be understood by ordinary people whom we assume to be liberals in a general sense. It will certainly fail if it does not stand distinguishable and distinguished from a sectarian, partizan or even a communal or emotive statement of the Muslim situation. At the same time in its success or failure will also lie the guage of the success of Indian polity and its maturity. It is all too easy to reject something which challenges or rejects one's own beliefs. The test would be to be able to pause and consider that there may be a world outside the cocoon of preconceived notions.

A word about methodology of this statement. As a trained lawyer two complementary tests are available to me. First, the reasonable man test: What would the reasonable man make of a proposition? Much of common law has developed on this basis but especially so the law of tort. English judges spoke of "the man on the Clapham omnibus" as the person whose instincts and responses provided the most important ingredients of judicial choice. The robust English jury system, still at work in civil damages and criminal trials, is basically an institution which had roots in the same belief. Of course when a judge speaks of "what is reasonable" and "what the reasonable man would do" he does not always make his own intellect irrelevant

to the decision. Indeed, it is a curious interplay of the community consensus and the informed appreciation of that consensus by the judge. It is quite possible to argue that in a plural society, or for that matter any society subject to the inevitable strains of industrialisation and class contradictions, there is no consensus and therefore no reasonable man. But that is a broader question. For practical purposes, it is enough to have sufficient consensus to identify a society as such rather than a state of turbulence or anarchy. The parameters of reasonableness are possibly relative but not elusive.

The second technique used by a lawyer is the testing of propositions on extreme examples. If a proposition breaks down on the extremes it need not be rejected outright but at least it calls for caution. At the same time, extremity tests should not become reasons for questioning motives of the propounder. The propositions on behalf of a minority have to be vociferous if they are not to be dismissed too lightly. Liberalism entails that a feeling felt strongly should not have to be expressed gently without sufficient reason. The incidence of reliance on extreme tests may also be correspondingly high. But, in the end, the minority argument will be true to itself if it does not overstate the substance of the case. And just as the majority must keep an eye on principles of liberalism each time a seemingly perturbing demand comes from the minority, the latter must not forget that their grievance cannot be an alibi for becoming freeriders in society.

Liberal analysis also entails a definition of communalism which differs from the one commonly assumed by vocal members of the majority. Even Muslims who follow the vision of radicals like Hamid Dalwai equate Muslim backwardness with communalism. "Indian Muslims believe that they are a perfect society and are superior to all other communities in India. One of the grounds for this belief is the assumption that the Islamic faith embodies the vision of a perfect society and, therefore, being a perfect Muslim implies not having to make any further progress." Unfortunately this not only is a parody of the actual position of Indian Muslims but even then an unacceptable view of communalism.

The Minorities Commission has itself attempted a definition

of communalism *via* 'communal organisation' :

> A communal organisation is one intended to facilitate the pursuit of or actually pursuing the object of exploiting a difference of caste, community, religion, race, language, culture or region for the purpose of obtaining unfair advantages at the expense of other communities or propagating hatred or hostility against others not sharing the same organisational basis.

This is clearly a liberal definition of communalism. An inward looking concern cannot be called communal, whatever else it may be. If there are disagreements within a community, it would just amount to a typical case of democracy. Indeed an attempt by an outside person to prevent intra-community concerns itself is a transparent form of communalism. All this holds true so long as there is a feeling of belonging to a community which may exist for a variety of reasons. At present it is nobody's case that such an identity does not exist. If the idennity, fades away in the natural course of human development there will be no minority problem. But that does not grant anyone the right to cause or hasten such a fading away.

BODYCOUNT: A THEORY OF EQUALITY

To most Muslim leaders, as well as other politicians and media persons who are engaged in espousing or reporting the cause of minorities, the measure of equality of citizenship rests almost wholly on the performance record of the administration in eliminating, controlling and punishing communal riots. Others more pragmatically concern themselves primarily with the living rather than the dead. A few jobs for the boys, a handful of top posts for leaders and the grievance is substantially satisfied. I would like to call this strategy for equal citizenship the strategy of bodycount. Bad points for the number of dead. Good points for the number saved. But such a thesis pre-supposes a pretty pessimistic state of affairs. It projects government as a caretaker-cum-surgeon, not a builder. Its simplicity may appeal to Muslims as well. But there are inherent dangers.

The essence of the claim for equality is, of course, far more complex. In the last chapter an attempt was made to encapsulate its fundamental philosophical features. Now for a more practical purpose some broad trends may usefully be identified.

There can be no meaningful social growth of a community or even existence without a degree of personal security. Therefore, obviously, the case of communal riots cannot be ignored, especially since a pattern has emerged in the past few years which indicates that they take place to disrupt the life of Muslims where they are on the threshold level of economic take off or are beginning to restructure themselves into a resourceful political lobby. The end result of communal incidents is insecurity, shattered confidence and confusion. The law and order aspect of communal riots is a specific policing problem which does not seem to have been tackled appropriately even after three decades of communal incidents. Sometimes police failure is frightening in its totality. The incidence of communal riots is as much a symptom of a deceased state of affairs as a cause of

further deterioration in the morale of the affected community. Just as riots are often a product of vile planning of several social malcontents and power seekers, they indicate a terrible poverty of state planning.

Protection of life is indispensable but security of life has a greater meaning than the simple fact of being protected from physical harm. Truly, living in indignity is probably worse than being eliminated by surprise. Our Constitution combines the guarantee of life and liberty under Article 21. Judicial interpretation has raised the minimal content intended for the Article by the Constituent Assembly to the broad and wholesome protection of procedural and substantive due process as laid down in *Menaka Gandhi* v *Union of India* and a host of cases decided on its precedent thereafter. Thus it is not simply life that is guaranteed but life with liberty. In other words, a good life; the life that permits the growth of the individual to his full potential, intellectually, morally, politically and economically. On that tack honour and opportunity become adjuncts of the good life.

But which is that full and good life that one might claim? Specific aspects of such a life will have to be identified and selected by every individual concerned. But equality itself shall be guaranteed if every individual has an equal right to express his preference and have those expressed preferences given equal consideration by the rulers or law makers. A distinction was shown in the last chapter between preferences that concern the individual's own welfare (and these are perfectly legitimate democratic preferences) and those that purport to control the welfare of others (and these are illegitimate and undemocratic preferences). So long as we understand this notion of preferences and the distinctions made thereunder we do not need to create special principles for the treatment of minorities. From that point of view preferential treatment rules flow directly from equality and do not have a matrix in a separate consideration.

The equality that remains elusive for the minorities has thus a prerequisite: ability and forum for expression of their preferences. It must be clarified here that there is a widely held belief that a secular state cannot, in principle, permit the intertwining

of religion and politics. This is only partially true and we shall see later to what extent religion has a legitimate role in politics if not statecraft. But whatever is stated here refers to Muslims as a cohesive social group with common interests to protect and advance. What is more, they have a perception of commonness. Their identification might well be through their religion but that is all. Possibly religion may just be a necessary condition for the identification but it is certainly not sufficient. Therefore, every precept propounded here would comfortably fit any other minority group with the mere change of labels. On this view the concern of Indian public institutions is with Indian Muslims and not with Islam. The adverse attention faced by Muslims is on the basis of one or the other, and sometimes a combination of both. This will become explicit in our discussion on the media. If Muslims are given their due as citizens, they will themselves be free to preserve and protect Islam.

It is important from the point of view of honour that Muslims get their just deserts, including any benefits of preferential treatment by the working of the liberal test from case to case, and not as reluctant charity. The issue of quotas and reservations has been raised amongst Muslims from time to time, and at least one Muslim former member of the Planning Commission has suggested likewise. Backward groups amongst Muslims are particularly keen to take advantage of quotas and reservations through the institutional system of Scheduled Caste prerogatives and privileges. Nothing would be more damaging for the community than to be relegated from rulers to applicants. Of course when the political situation is appropriate it is far easier to make an exception for Muslims, or at least to appear to be making an exception, than it is to re-examine critically the normal functioning of institutions of distributive justice. For a Muslim leader, too, this path may seem considerably attractive because of the immediate impact on public opinion. Indeed, most professional politicians with an obvious lack of perception and imagination opt for this approach. The ultimate result is very little by way of cementing of social achievement and yet a sufficient provocation for a cry of "Muslims are being pandered to".

So much for the structure of distributive justice and political perception. There are other things to consider as well. To a

majority many things come naturally and they take the response of the other communities for granted. Thus many social practices and behaviour patterns of conduct associated with the majority find themselves being elevated to the status of 'Indian' Any innocent query about them could be easily misunderstood. Just for that reason the interaction on a petty cultural level remains inadequate. Sometimes this may lead to patent inconsiderate actions. A recent newspaper report has it that the Prime Minister has asked for an explanation from Delhi's planning department regarding the installation of a statue of Bhagwan Mahavir at a prominent spot in the vicinity of the Qutab Minar. It is a beautiful statue but obviously violates the environmental and aesthetic integrity of the remnants of pre-Moghul and Moghul architecture. Delhi's historical character has changed radically. But a few opinions of Muslims in the matter of situating the statue should surely not have been very difficult to seek.

There are, similarly, other spheres of national policy planning where Muslims are overlooked, not deliberately but by oversight. Take the issue of Pakistan. It is considered too sensitive for Muslim opinion to be taken into account. Yet many north Indian Muslims have families in that country. We show deep concern and understanding for the plight of expatriates in Southall but none for our relatives in Karachi. No Muslim at any level has so far played any role whatsoever in the relationship of war and peace between India and Pakistan. Yet the battlefield was strewn with bodies of Muslim soldiers as well when they defended the motherland India. Need one recall the heroic deaths of Brigadier Osman and Havaldar Abdul Hamid, PVC? We would have reasons to take pride in our accomplishments as a nation when we can get a Muslim Indian to sit across a table with a Muslim Pakistani, quite as we allow a Zafar Iqbal or a Nawab of Pataudi to encounter their counterparts from Pakistan.

I do not propose to suggest that Muslims must have the best of everything. In all fairness they have willingly given up their just claims when the need of national integration has so dictated. The whole business of cow slaughter has, by and large, been very sensibly compromised by Muslims. Those who wish to make an issue of such things deserve our contempt. But then,

those who have cooperated must receive some appreciation.

Even in a near perfect society, if group perceptions persist a minority would be at a distinct disadvantage due to the simple matter of numbers. To overcome that disadvantage the minority has to shout louder than others to be heard, but not about numbers alone. If the system makes the minority selfconscious in this matter or implicitly prods it to change its nature to be more successful in the bargain, the system is unfair and, at best, only mouthing a belief it does not support.

Symbols may have their useful role in pragmatic politics and a legitimate role in the process of providing equality, which we know cannot be provided overnight. But one must not turn symbols into a ritual. When a Muslim begins to claim a position of eminence because he is a Muslim and not because he is an Indian the disaster is complete. A Muslim must not be obstructed because he is a Muslim, nor suffer a special disability for being one. But he should claim eminence only on his intrinsic worth. So well wishers of Muslims must consider what sort of equality they wish to see the Muslims inherit; the equality of sufferance and patronage or the real equality of self-assertion.

Chapter Four

AT HOME IN INDIA: A MATTER OF FAITH

On 15 August 1947, some Indians made a choice. The choice was to stay home in India. These Indians were Muslims. And since then they have commonly come to be known as Indian Muslims. Some people prefer to call them Muslim Indians. The choice made was a difficult one for it meant rejecting a powerful claim for living together with their brethren in a state perceived to be of their liking. And it meant, for quite a few of them, divided families, lost properties and, for not too few, even shattered lives. Of course the trauma of the actual transition and the days of Partition wore off. But the scars never healed. The Indian Muslims, however, do not speak of the trauma, the injury or the insult. Because the choice was a clear one. To stay at home.

In the three decades that have passed since that critical day in 1947, the distressed and disturbed social structures have found a fresh balance and, in many cases, a transformed identity. But the Partition and the choice were not to end the crisis of the Indian Muslim. The crisis continues in the shape of gruesome communal riots, unbelievable poverty, debilitating social backwardness, incoherence in political philosophy, a terrible lack of self-confidence and, last but not the least, a seemingly inexplicable poverty of social and political leadership.

In a sense, the condition of Indian Muslims cannot be described as entirely different from the circumstances of minorities in other societies. But there are certain unusual aspects that lend to it characteristics which contribute to its complexity as well as its irony. To begin with, it is a minority population that ranks as the third largest Muslim population in the world, next only to Indonesia and Bangladesh. Secondly, it is a minority unnaturally truncated by the removal of its best resources, elite classes, and the virtual decapitation of its original economic structure. The formation of Pakistan deprived Indian

Muslims of the best professionals, cultural giants and, most of all, the accumulated spirit of India's Muslim civilisation. In effect, all that was left in India were crumbling stone monuments of the Moghul era and a few outstanding personalities like Maulana Azad, Rafi Ahmed Kidwai and Dr Zakir Husain. Thirdly, the Muslim minority in India became a reluctant victim of self-consciousness at the monstrosity of the Partition and the fact that India and Pakistan parted not as friends but as enemies, and to this day have remained hostile to varying degrees. And finally, of course, to compound the disadvantages of this truncation, was the continuing ripple effect of the original source of the demand for a separate Muslim nation—the sudden dawning upon the Muslim psyche that its obdurate refusal to assimilate western culture, and the corresponding enthusiasm of the Hindus in embracing it, had placed the former in a distinct historical handicap. Muslims were now perturbed that they were left at the mercy of Hindu India which had been clearly provoked by the actions of their own brethren who had shared this apprehension and precipitated the break. Yet they cannot just be ignored because they form over twelve per cent of India's population.

Those to whom, in the middle of the 1980s, it might seem startling that a Muslim can seriously express concern for his welfare, have only to go back barely fifteen years and the last two wars with Pakistan to discover how pathetic the condition of a Muslim in free India could be. During the 1965 war, Government of India had to arrange a special speech by the Vice-President to dispel widespread rumours that he had been detained for being a Muslim. The matinee idol, Dilip Kumar (actually Yusuf Khan) had to desperately run from pillar to post to protect his reputation against vicious insinuations and allegations of his being a Pakistani spy. There were governmental orders demarcating special sensitive posts not to be manned by Muslims and, as late as 1967, Congress leaders like Kamaraj made a serious issue of opposing a Muslim candidate for the Presidentship of India on the ground that a Muslim could not possibly be elected to the highest office of the country. Much of that has gradually faded away with the passage of time but new problems, perhaps more embittering in nature, are

beginning to spring up.

Nothing has united Muslims since Khilafat and the heyday of the Muslim League quite like the recent closing of ranks in the face of a pervasive attempt by certain forces to push Muslims to the wall. In the wake of the Punjab crisis, as the Congress party consciously or coincidentally acquired the mantle of Hindu dependence and other political parties watched in helpless confusion, Hindu orthodoxy made a public assertion of its identity. A majority does not have to direct its hostility towards the minority to cause misgivings about its intentions. So the fanfare of *Ektamata Yatras* sent jitters up the Muslim spine. And while the nerves were still tingling came the bombshell of the *Shah Bano* judgment in which the Supreme Court made a solemn pronouncement for the imperative of an Uniform Civil Code, the one thing Muslims fear as much as a communal riot. This came a few months after the Supreme Court decision in the *Varanasi Graves* case. And as if this was not an ample doze for insomnia, a junior judge in Faizabad unlocked a major crisis by ordering the sealed doors of the Babari Masjid of Ayodhya to be flung open to Hindu devotees. Suddenly the assiduously created sense of security and justice received a rude jolt.

The clouds of despair are beginning to look pretty dark and there appears to be no silver lining either. On both sides, the majority as well as the minority, there are unwholesome parallels being drawn. "We may have another Sikh problem on our hands. Let us not make the same mistake of leniency," says the majority. "We are five times as many Muslims as there are Sikhs. And we are all over India. We have nothing to lose and much to gain if we follow the Sikhs," whispers someone in the minority. But awful as the situation may be, one thing is clear and must be accepted categorically—this is a domestic discord and no external force has a direct or indirect bearing on the issues. Quite often it is assumed that Pakistan is an interested, indeed an instigating, party. It is said in the case of Punjab and it is being repeated by a small section of people in the case of Muslims. Nothing could be further from the truth. Indian Muslims do not look beyond their home for their salvation and survival. But in their home they intend to take a stand with tenacity and determination.

It is, of course, a strange irony that Muslims should express solidarity on an issue which has little impact on their daily lives. They have never marched together for bread but today they have willingly faced bullets to defend a minor religious precept and a few yards of sanctified earth. But the road from here can lead to many destinations.

In the context of Muslim solidarity, one must first identify the person who quantifies as an Indian Muslim. Professor Mujeeb in his *locus classicus, The Indian Muslims* begins his account with that query:

> Who are the Indian Muslims? Whoever they may be, and wherever they may be in India, the Indian Muslims take themselves for granted. This is true of all periods of Indian Muslim history, and it is true even now, when a division of the country has taken place on a basis that does not appear to be justified by history. But the Indian Muslims have taken themselves for granted in many different ways, and a precise definition of who and what they are becomes very difficult. The principle of the census, that everyone who is an Indian and calls himself a Muslim is an Indian Muslim, obviously gives no indication of what it is to be an Indian Muslim. If we apply any of the criteria on ground of which individuals can be considered to constitute a community, we are faced with the problem of classifying masses of people whose unity comprehends many diversities, the significance of which can be understood only in the light of their historical development.

In view of that Professor Mujeeb sets out to examine the historical development. But he does not give a compact definition. Perhaps one is not really needed at all—Muslims themselves certainly do not feel the need for one. But an interesting sociological comment of Professor Moonis Raza, said partly in jest, seems to fit the bill. At a private dinner in New Delhi hosted by the effervescent Ahmed Rashid Shervani, the Vice-Chancellor of Delhi University found himself in the company of A.H. Rizvi, Editor of *Radiance*. Being of a witty and curious nature, Professor Raza pilloried Mr Rizvi on the definition of a Muslim.

"One who recites the *Kalima,* believes in Allah, his Prophet

Hazrat Mohammed and the *Quran* . . . ." promptly replied Mr Rizvi.

"But then what of us Shias who think you are not true believers but usurpers? What of Deobandis who question the faith of Barelvis? What of the four schools?" enquired Professor Raza.

Mr Rizvi was beginning to feel exasperated. This was no way to seek a definition. Just then, Mr Shervani came to his rescue.

"Why doesn't Professor Raza tell us who is a Muslim?"

There was a quick consensus and Professor Raza was cornered.

He paused and said: "A Muslim is one who fears that he would be slaughtered when there are riots! To that extent, and that extent only, Mr Rizvi and I are in the same boat and are equally Muslims."

The comment goes to the heart of the matter. It highlights the ultimate concern of Indian Muslims but it also throws up a distressing fact—that the boat in which Professor Raza and Mr Rizvi sail is very small. Mr Rizvi and millions like him have other concerns as Muslims, some rational, others not. And they are as much part of our home as us.

Independent India, with all its glorious accomplishments and nagging disappointments has not produced a serious Muslim thinker of the calibre of Sir Syed Ahmed, Shibli Numani or Dr Mohammed Iqbal, except for Maulana Abul Kalam Azad, whose major ideas and themes took shape before Partition. In the absence of any articulate position or intellectual aspiration the perception of the Muslim position remains stagnant at the level of the lay person's reactions to events. In the absence of a clear leadership any collective effort remains a matter of chance.

Chapter Five

TWO NATIONS, TWO NATIONALISTS: PRIVATE PARTITIONS

When a Member of Parliament recently asked the government why a "communal" film like *Garam Hava* was shown on *Doordarshan* (television), surprisingly there was no indignation. Of course the government minister did not accept the MP's contention, but he did not categorically say what should have been said —only a morally blind man would call that film "communal". The fact also remains that a public representative expressed such alarming sentiment about a sensitive film made by a brilliant film maker, M.S. Sathyu. It indicates the pervasive ignorance about what Partition did to Indian Muslims. It was not easy then, and it is not easy even now.

Garam Hava, the poignant portrait of an Agra-based shoe traders's family rocked by the Partition, is not far from the reality of the pain of destruction Partition caused to Muslims. Two families, the Husains and the Shervanis, whose scions shone as bright over the firmament of post-Independence India, lived through Partition with grave personal losses. Yet they gave India their best.

The Life of a Rosebud

Dr Zakir Husain hesitated momentarily as his predecessor, Dr S. Radhakrishnan, offered him the imposing red velvet chair with a golden Ashok Chakra embossed on it. 'Mian', as I called my grandfather, was always uncomfortable in a chair of eminence though his stately bearing made him an ideal person for a role of high dignity. As the Central Hall of Parliament thundered to enthusiastic applause for India's first Muslim President, in gentle but resonant voice, Dr Zakir Husain thanked the nation for which two decades earlier he gave up his brother, his nephews and neices:

> The whole of Bharat is my home and its people are my family.

> The people have chosen to make me the Head of this family for a certain time. It shall be my earnest endeavour to seek to make this home strong and beautiful, a worthy home for a great people engaged in the fascinating task of building up a just and prosperous and graceful life.

Hundreds of miles away a newsreader, Anwar Husain, paused in the Islamabad studio of Radio Pakistan to contain his emotion before reading the first item on the international list: "Dr. Zakir Husain today took oath as India's third President..."

The emotion was understandable. Anwar Husain's father, Mehmood Husain Khan, was Zakir Mian's younger brother.

Mehmood Husain Khan had met his two brothers, Mian and Yusuf Husain, in India only once after Partition. He rose to be the Vice-Chancellor of Dacca University and a Cabinet Minister in the Liaquat Ali Khan government. His brothers in India had been Vice-Chancellor and Pro-Vice Chancellor of Aligarh Muslim University. The three educationists met in New Delhi for the UNESCO conference. The only other time that Mehmood Husain Khan travelled to India was to attend the funeral of the President on 3 May 1969.

Mehmood Husain did not make a special choice to live in Pakistan. As Head of the Political Science Department of Dacca University, destiny placed him in Pakistan. India lost an eminent educationist and Dr Zakir Husain a favourite brother.

The intense nationalism of the three Husain brothers was displayed in innumerable sacrifices, personal and public, but one particular decision stands out. Young men of means at the turn of the century sought opportunities to travel to England for a place at the renowned universities of Oxford and Cambridge. But the Husain brothers, unlike their contemporaries, preferred France and Germany to the country of imperialists who ruled India. Though they had passports only for England they would disembark at an European port and make their way to the country of their choice. Before going to Germany, Zakir Husain had experienced the mixed joy and pain of breaking away from his *alma mater*, M.A.O. College, Aligarh and, under the guidance of Hakim Ajmal Khan, Dr M.A. Ansari and Maulana Mohammad Ali, had accepted the challenge of setting up the

Jamia Millia Islamia on 29 October 1920 to defy British control. By 1925, after Zakir Mian's departure for Germany, Jamia Millia needed urgent salvage. With Gandhiji's initiative, Hakim Ajmal Khan brought Jamia to Delhi and found accommodation in Karol Bagh. Earlier in 1925, Dr Zakir Husain gathered a group of brilliant friends he had acquired in Germany and set sail for India and Jamia's future. The group included Dr Abid Husain and Mohammed Mujeeb.

In June 1926 this group of Jamia devotees (dons would be terribly inadequate to express their involvement) met Gandhiji at Sabarmati Ashram and a relationship was born between the twenty-nine-year old idealist and the aging, frail political saint which added a fascinating dimension to the Independence movement. Gandhiji insisted that any doubts about retaining the word 'Islamia' in the name of the institution must be repudiated categorically. He even expressed his willingness to go around with a beggar's bowl for Jamia but believed very fervently that the institution must remain a distinctively Muslim institution, nurtured by the sweat and dreams of nationalist Muslims of India.

Jamia began to grow, slowly, but with pride. Gandhiji's Basic Education Scheme, drafted by Dr Zakir Husain, gave to Jamia and Zakir Mian a pivotal role in the shaping of India's future. It demoralized the Muslim League and exposed the hollowness of their claim that Independent India had no place for Muslims. In February 1928, Jamia lost Hakim Ajmal Khan. But as the gathering of eminent persons at the meeting to mourn his death indicates, it had acquired a stature unknown to any educational institution in India. Amongst others, Pandit Motilal Nehru, Pandit Madan Mohan Malviya, Maulana Mohammad Ali, Srinivas Ayengar, Pandit Jawaharlal Nehru, Maulana Abul Kalam Azad, Dr M.A. Ansari, Mrs Sarojini Naidu, the Maharaja of Mehmoodabad and Lala Shankar Lal were present. Their list read like a summary of the final phase of the nationalist movement.

Starting on a salary of Rs 300, which he voluntarily reduced to Rs 80, the gentle Pathan whose ancestors had commanded large estates and whose father had died prematurely as a very successful lawyer of Hyderabad, seldom took home more than Rs 40. In his childhood a Sufi *fakir* had imbibed the virtues of

asceticism and simplicity in Mian, which came in handy in the days of Jamia's tribulations. A generous *bania*, one Subba, and the wife of Mannu Khan, the contractor who lived nearby, kept the home fires burning with timely loans to be paid off when lectures were delivered and payments came in.

Many years later, when Mian was President of India, he asked his ADC to conduct a search for that same kindly *bania* and have him driven up to the Rashtrapati Bhavan. The Military Secretary was a trifle worried about protocol when the President went to the door to embrace Subba, and said, "Sir, you should not be here."

"But for him, I would not be here," the President said.

One incident, as reported by Mian's close friend and colleague, Professor Mujeeb, stands out as encapsulating the idealism of the Jamia movement and the personality of the man who had emerged himself completely in it:

> Dr Zakir Husain's favourite daughter Rehana had a functional defect in the heart. She was a lovely creature, with rosy cheeks, chestnut hair and large thoughtful eyes. Dr Zakir Husain was very fond of her. He was distributing sweets to the boys of the Primary School who had passed in their examinations when a peon came and whispered something into his ear. He continued distributing sweets. A little later the peon came again and whispered something. Dr Zakir Husain turned pale but continued giving away sweets. Meantime the bell was rung loud and long and people began to ask what had happened. They were told that Rehana had died all of a sudden. Work was suspended and members of the Jamia community began to collect at Dr Zakir Husain's house. He was among the last to come. When asked why, he said he had got the sad news but was at a school function and the children were feeling so happy that he did not want to interrupt it (the mood). He was rather quiet but otherwise his usual self; he did not let it appear that he was performing the last rites of a child very dear to him. I learnt later from Begum Zakir Husain that for some time his pillow was found wet every morning; that was how she discovered that he wept at night.

Those were times when personal loss could be mourned only in the solitude of the night.

But even as Jamia struggled to survive forboding rumblings of a major national catastrophe did not go unnoticed to its people. Dr Zakir Husain gave utterance to the heartache of good men:

> We are fortunate in having Babu Rajendra Prasad among us, and he will formally open our conference. I wish to convey through him to all leaders of political opinion in our country the fervent entreaty of all those engaged in the work of education to chasten and reform our political atmosphere, and to lay, as soon as possible, the foundation of a state in which one community will trust the other; the weak will not be in terror of the strong; in which the poor will not suffer injury from the rich; a state in which different cultures can flourish side by side, and each bring into relief the virtues of the other; a state in which every citizen can develop to the full the finest qualities latent in his nature, and devote to the service of society the full resources of his personality. I know it is easy to make such a request, while it is beyond the competence of any single person to fulfil it. But I feel that today, more than ever before, political leadership has the chance, by appreciating the desires and difficulties of various communities and groups, and by promoting a frank and open exchange of power and privilege, to lay the foundation of a moral progressive state. Till that has been done, the condition of us educationists will be pitiable. For how long shall we plough this desert? For how long shall we endure to see our plans, our ideals, our dreams being suffocated in the poisonous smoke of suspicion and distrust? For how long shall we tremble with the fear that a single political mistake, a little show of obstinacy, can destroy for ever what we have achieved with the labour and the love of a lifetime? Our work is no bed of roses. We are often despondent, often heartbroken. If ever we feel our strength failing us, upon whom shall we lean? Shall we lean upon this society which knows of no song that all may sing together, no festivals that all may celebrate, no joys that all may share, no sorrows that link heart to heart in sympathy? Our distress is beyond endurance.

> Bring us relief, relief today; for who can tell what tomorrow has in store.

Of course the clashing waves of suspicion and fear could not be calmed by the lonely voice of reason. The climate of treason was so cruel that every prominent Muslim was subjected to rumours about being sympathetic to Pakistan. When one such irresponsible report about Zakir Mian reached Gandhiji, he was very worried and asked Rajkumari Amrit Kaur to meet Zakir Mian. Of course he stated his opposition to Pakistan but also expressed his dismay at the manner in which Pakistan was discussed. When all communications had failed Gandhiji requested Dr Zakir Husain to speak to Jinnah about giving up his obstinate stand for Pakistan. Jinnah first questioned Zakir Mian's authority. When Gandhiji's letter of authority, which is still among Jinnah's papers, was produced, he said: "Zakir Husain, we will have Pakistan but we must have you." Jinnah could not overwhelm his idealism and neither did the attraction of the joining the Indian government. Nehru wrote his name in his own hand in the list of Ministers in the interim government. But Zakir Mian said he would accept only if Congress and the League jointly sponsored him. He had obviously not given up hope. In November 1946, less than a year from Independence and Partition, Jamia celebrated its Silver Jubilee. It might come as a surprise today that Jinnah, Jawaharlal Nehru, Liaquat Ali Khan and Maulana Azad were together the guests of honour. Professor Mujeeb describes the feeling in vivid pictures of a sad and poignant moment in history:

> He (Dr Zakir Husain) summed up and surpassed anything he had before in his written speech at the Jubilee meeting, perhaps the most eloquent and moving speech of his life. He had, sitting to his right and left, the persons on whom, at the time, depended the destiny of the Indian people. He spoke as an educator who had worked and suffered for over twenty years and who saw imminent danger of his own and of the hope of all genuine educators being wrecked. His words brought tears to many eyes and, if men were not habitually sacrificing their generous instincts on the altar of self-interest,

might have brought about a change of attitudes of great significance in Indian history. Turning to the political leaders, Dr Zakir Husain said:

> You are all stars of the political firmament; there is love and respect for you not only in thousands and in millions of hearts. I wish to take advantage of your presence here to convey to you, with the deepest sorrow, the sentiments of those engaged in educational work. The fire of mutual hatred which is ablaze in this country makes our work of laying out and tending gardens appear as sheer madness. This fire is scorching the very earth in which nobility and humanity are free; how can the flowers of virtuous and balanced personalities be made to grow on it? How can we provide adornment for the moral nature of man when the level of conduct is lower than that of beasts? How shall we save culture when barbarism holds sway everywhere? These words may appear harsh to you, but the harshest words would be too mild to describe the conditions that prevail around us. We are obliged, by the demands of our own vocation, to cultivate reverence for children; how shall I tell you of the anguish we suffer when we hear that in this upsurge of bestiality even innocent children are not spared? An Indian poet has said that every child that is born brings with it the message that God has not altogether despaired of mankind, but has human nature in our country so lost hope in itself that it wants to crush these blossoms even before they are opened? For god's sake, put your heads together and extinguish this fire! This is not the time to investigate and determine who lighted this fire, how it was lighted. The fire is blazing; it has to be put out. It is not a question of the survival of this nation or that nation, it is a question of choosing between civilised human life and the savagery of wild beasts. For God's sake, do not allow the very foundations of civilized life in this country to be destroyed as they are being destroyed now.

The full impact of this speech would be felt if we read it side by side with any of the speeches made by any of the persons representing his party at any of the conferences and discussions; or if we remember that, according to one manner of statement, it was delivered when all the efforts to achieve an understanding between the Congress and the Muslim League had failed and, according to another way of saying it, when the Calcutta "killing" had taken place and its repurcussions in the form of a furious and blind destruction of life and property had become evident in Bombay, Noakhali, Bihar and the Punjab. All those who were willing to make reasonable

concessions were in despair. As an educator, Dr Zakir Husain had made his last, desperate appeal. . . .

Only months later, Dr Zakir Husain would himself have disappeared into the gory statistics of Partition at the railway station of Ludhiana en route to Jalandhar for Kashmir with a companion, but for an obscure railway officer, Harbanslal Kapur and a young Sikh officer, Capt Gurdial Singh, who saved his life from a gang of communal killers. Dr Zakir Husain's close brush with death may have saved thousands of lives. Upon hearing his account, Prime Minister Nehru airdashed to Jalandhar to personally supervise security operations. But as the unrepentent wave of violence, suffering and sorrow wore on, even Jamia was under imminent threat of attack from neighbouring villages. Fear and despondency was writ large on every face. Cruel rumours vanquished such faith as was still breathing in broken bodies. Humayun's Tomb, made to house the mortal remains of an Emperor, now housed uprooted families. Jawaharlal Nehru made a special visit to ensure Jamia's safety and Gandhiji's first words upon arriving back in Delhi were: "Is Zakir Husain safe? Is the Jamia Millia safe?"

One might echo the refrain once again four decades later:

"Is Zakir Husain safe? Is the Jamia Millia safe?"

There was a time when a visiting journalist and commentator, Taya Zinkin, could have written that no account of modern India is complete without a chapter on Jamia Millia Islamia and its amazing head, Dr Zakir Husain. Today Jamia has to virtually beg for a place in the sun. When Jamia was conceived for the rejection of British education it was not just a superficial political ruse. A conscious decision was taken to provide a pattern of education which would be the logical culmination of the *Swadeshi* movement and the call for *Swaraj*. Jamia rejected the English medium of education and concentrated on disciplines which would serve the masses. As a result, the institution to which Gandhiji sent one of his sons is today dismissed by Education Ministry bureaucrats as 'sub-standard'. It is only a ' deemed ' university and, surprisingly, the issue of granting it a statutory university status has, for years, fallen on deaf ears. One recent Education Minister even queried the justification for

the word 'Islamia' in a secular society.

Delhi has two other well equipped universities: University of Delhi and Jawaharlal Nehru University. The South Delhi campus is well on its way to becoming self sufficient. But Jamia has to make do without an auditorium and a swimming pool. There is a proposal for a medical college but nobody to receive it. Jamia lives on a grant which wouldn't finance a faculty of a decent university.

Jamia might not have received its just deserts but its nationalist traditions have been preserved. Today the Hindi department is headed by Mujeeb Rizvi whilst the Urdu department can boast of a foremost scholar in Gopi Chand Narang. It is a Muslim university which has no reservation for Muslims. As history goes it is affluent. But as a contemporary of other universities it suffers from all the attributes of poverty. Its well wishers now have to prepare self-conscious briefs about its contributions to the national movement to attract official attention. They search the archives for documents which link it with glory. But time has suppressed its vitality in chains of mediocrity. And somehow in its inadequacies are reflected the failures of the community which it is associated with. Did Jawaharlal Nehru and Mahatma Gandhi fret and fear for nothing? Was Jamia rescued from the barbarians to die a hundred deaths at the hands of the bureaucrats?

Something must have happened to reduce Jamia to the state of an unwanted child. Did nationalism cease to have meaning with Independence? Or was Jamia slow to adapt itself to the values of a success based system as opposed to an history of sacrifice? Some, if not all, the answers will be found in the predicament of nationalism and minority character. Sometimes a minority is ignored because it is different. Sometimes the minority fails to assert itself because it feels different. The fact is that if a bastion of nationalism like Jamia feels awkward and different we need to reexamine our preoccupations.

I was too young to really absorb the immense wisdom which Zakir Mian, my grandfather, carried ever so easily. But not too young to remember that as Vice President of India he was hurt when wild rumours in the country had it that he was 'imprisoned' for *ghaddari*. He spoke to the nation on the radio at the

request of the Prime Minister. Then, some years later, came the succession to President Radhakrishnan. Even an adroit politician like Kamaraj opposed Mian's candidature because he was a Muslim. Mrs Gandhi staked her career to have him elected. She was probably carrying out the wishes of Jawaharlal Nehru as well as her own desire to prove to the world that our secularism went deeper than the ink of the Constitution. Of course once that barrier was crossed, the election of Mr Fakhruddin Ali Ahmed as the fifth President of India was a simple matter.

Today Mian lies buried in his real home, Jamia Millia, inside a sliced marble structure befitting his austerity and dignity. Seldom do the lights come on at night. Often the roses he loved dearly wither for want of attention and the grass goes pale with thirst. And a Muslim Minister enquires: "Why can't Jamia look after the mausoleum by itself?"

Some ten miles away Hakim Ajmal Khan's Tibbia College is decaying in a place in Karol Bagh where every inch of land gives gold. Indeed some eminent politicians even suggested that the historic premises of Tibbia College be sold off for a grand bazaar. The students who come to study Unani and Ayurvedic medicine there are accustomed to neglect. "We have come here because we couldn't get into MBBS. When we get out we will obviously practice Allopathic medicine," they nonchalantly tell you.

Gaya University was lost in a calamity, buried deep in dust and history. Yet it is not forgotten. But Jamia and Tibbia live forgotten, too young for chronicles, too old for indifference.

Never the Twins shall Meet

On 15 August 1947 a young, beautiful woman called Talat Hamid gave birth to male twins in Lucknow. Mrs Padmaja Naidu greeted the boys as the children of Independence and named them Azhar and Zafar. But the boys, nephews to the leading nationalist public man and industrialist, M.R. Shervani, were not destined to grow up together. Talat's husband was from Lahore and she had to return there. She could not dream of insisting that her husband uproot himself from their matrimonial home to settle in India, much as she loved her childhood haunts of Aligarh, Allahabad and Nainital. Talat's brother, M.R.

Shervani, did not have a son, so it was decided that he would adopt one of the twins. Azhar Shervani was picked to grow up an Indian. Zafar Hamid grew up as a citizen of Pakistan. They are both married and have two daughters and a son. The cracked mirror of Partition did not destroy their identity.

Many years later the *guru* who taught yoga at the Shervani household in Allahabad arrived to greet his young pupil in his chaste Hindi. The young man looked nonplussed but not as much as the *guru* when Azhar walked in to gleefully introduce his 'cousin' from Pakistan!

While the kids were growing up their parents ensured that they saw each other often. In the beginning travel to India was easy. Then with the Kashmir problem becoming ugly, stringent visa controls were introduced. On one particular occasion Mr Hamid could not get a visa. Talat arrived in Delhi and asked for an appointment with the Prime Minister, Jawaharlal Nehru. Shervani's were intimate Allahabad friends of Nehru and infact he had even participated in the decision, in 1940, to get Talat married to Mr Hamid.

"What have you done, Chacha? My husband's country is there. My brother and father are here. We did not ask for Pakistan. It was thrust upon us. And the officials won't even allow us to visit our families." Talat spoke from the heart. The Prime Minister was distressed. He ordered his Secretary to ensure that Mr and Mrs Hamid never had a problem with immigration. They never did.

Jawaharlal Nehru's friendship was very dear to the Shervanis. But beyond that a deep passion for India guided the vision of the family, especially the most recent of its stalwarts, Mustafa Rashid Shervani (1921-1981).

The story of Shervani participation in the nationalist movement goes back to Tassaduq Ahmad Khan Shervani (1885-1935) who belonged to a Pathan clan which migrated to India in the twelfth century from a place called Sherwan on the border of Afghanistan and the North West Frontier. At Cambridge University, the young Pathan scion of Aligarh befriended Jawaharlal Nehru, Syed Mehmud and Abdul Majid Khwaja. He returned to India with a zeal to immerse himself in the cause of Indian nationalism. The rest of his life, like that of his contemporaries, was a

thrilling saga of defiance of imperialism. In 1920 he joined the band of nationalists who left the portals of Aligarh to set up Jamia Millia Islamia, becoming its Secretary. By 1921 the government considered him a nuisance enough to imprison him. But that only spurred him on to greater enthusiasm. He took active part in the 'Khilafat Committee' and by 1930 became the President of the U.P. Congress Committee.

T.A. Khan Shervani's nephew, Mustafa Rashid, was barely twenty-five when Partition broke up the land. Established Muslim families of Allahabad had either uprooted themselves for a journey to a new home or else were nervously postponing the inevitable departure in order to transfer some wealth to Pakistan. But in February 1948 M.R. Shervani launched the Great Eastern Electroplaters Ltd, subsequently renamed GEEP, the contemporary password for torchlight. Even his father, Nisar Ahmed Shervani, a Minister in the U.P. Cabinet advised him to proceed with caution and to a watch developments for a while. The first bank manager he approached disdainfully dismissed him as a "high risk" person due to the likelihood of his going away to Pakistan. But M.R. Shervani was not a man to accept defeat. There were difficult times when the light in GEEP seemed to be failing. But he persevered to make it a stunning success story of Indian industry.

Combining industry with political accomplishment, M.R. Shervani rose to be a distinguished Congress party MP (Rajya Sabha) and a leading light of many educational and charitable institutions. He died in 1981 as the patriarch of the sprawling GEEP Flashlight Industries and the Sherwani Sugar Syndicate. His political successor and son, the debonair Saleem Shervani is now one of the young MPs of the Eighth Lok Sabha. Azhar, Saleem's elder by a few years, looks exclusively after the family business. From time to time the family gets together and the passports are forgotten.

Chapter Six

NO LAND'S MAN: THE STRANGE CASE OF TASKIN AHMED'S CITIZENSHIP

The story of Taskin Ahmed of Delhi is the story of Partition. It is a graphic narrative of the immeasurable misery which the carving up of India inflicted upon the souls of ordinary Indians. The frenzy of communal violence may have been apocalyptic in impact but the insensitiveness to the predicament of men like Taskin Ahmed is a legacy of permanent human deprivation left by the Partition. The Enemy Property Act and the Evacuee Property Act were both excruciating, incapacitating legislation responsible for widespread injustice to the Muslim community of north India. But the Citizenship Act added insult to injury.

Taskin Ahmed was tried for living at home in India. He was apprehended by the police on 27 June 1974 at about 7.30 p.m. near a tent factory in the Wazirpur Industrial Area of Delhi. On interrogation he is reported to have given his name as Ghaffar, which, obviously, was not true. "I was scared," he later said. On the basis of the relevant entries in the register of arrival and departure of Pakistan nationals, it was alleged that Taskin Ahmed entered India via Attari Road on 14 February 1955 on a Pakistan passport with an Indian visa. He went to his father in Kanpur and his visa was extended from time to time till 16 September 1955. During his stay Taskin Ahmed is also reported to have visited his "native village," Vasa Dargah in District Basti. Thereafter he came back to India on 12 February 1957 and, as per records, stayed till 13 August 1957. Some time later he is supposed to have illegally crossed back into India and has stayed put till arrested in 1974. Meanwhile he got married and had six children, the eldest of whom is almost 23 years old. He works as a handloom worker earning six hundred rupees a month.

Taskin Ahmed was able to show to the trial court his birth certificate of the year 1936 indicating his birth in Kanpur. He

also produced a copy of the village register in which his family's names were entered. He showed the electoral list for Domariaganj constituency in which his name figures. But he could not show any documentary proof that on 26 January 1950 he was in India. How many of us can do that? How many of us suffer two years rigorous imprisonment for this?

The Citizenship Act, 1955, Section 9(2) provides that a citizen of India who by naturalisation, registration or ortherwise voluntarily acquires or has at any time between 26 January 1950 and the commencement of the Act (i.e. 30 December 1955) voluntarily acquired the citizenship of another country shall, upon acquisition or as the case may be, cease to be a citizen of India. The Citizenship Rules 1956 provide that the decision as to whether a person has acquired another citizenship and therefore divested himself or herself of Indian citizenship, is to be made by the Central Government. But the rules of evidence specified in Schedule III impose a conclusive unrebuttable presumption of law and fact that acquiring of a foreign passport amounts to divesting of Indian citizenship. So once the Central Government has established in a person's case that he has taken a Pakistani passport, the rest follows quite quickly. There isn't much left for a trial court to do except pronounce guilt and sentence. There has thus far been no direct challenge to the validity of the provision because only once has the matter of conclusive presumption come to the Supreme Court of India and left undecided because the Attorney General gave the court an assurance of reviewing the rule.

Despite such extraordinary powers, it seems curious that a series of cases have come to the Supreme Court since *State of Andhra Pradesh* v *Abdul Khader* (1962) right up to *State of Gujarat* v *Yakub Ibrahim* (1974) in which the Central Government has failed altogether to apply its mind and prosecutions have been commenced without fulfilling the prerequisite of a decision of the Central Government. In *State of Uttar Pradesh* v *Rahmatullah* (1971) the Supreme Court held:

> ...it seems to us to be obvious that till the Central Government determined the question of the respondent having acquired Pakistan nationality and had thereby lost Indian

> nationality, he could not be treated as a foreigner and no penal action could be taken against him....

Taskin Ahmed's case is on all fours with that judgment of the highest court of the land. Yet the trial court convicted him. The first appellate court rejected his appeal. The Delhi High Court exercising its criminal revision jurisdiction, held:

> In view of this settled law, therefore, the conviction of the petitioner for the aforesaid offence cannot be sustained. Of course, it will not be open to this court to acquit him either because the question whether he has lost Indian citizenship has yet to be decided by the Central Government.

In the year 1986 Taskin Ahmed's life history read as follows:

Born in India 1936.
Alleged offence committed in 1958.
Arrested for the offence in 1974.
Convicted and sentenced in 1982 to rigorous imprisonment of one year.
Conviction and sentence quashed by High Court in 1986.
Ascertainment of nationality awaited in 1986.

The first application by Taskin Ahmed to be considered an Indian citizen was made way back in 1969. On 7 December 1984 the Central Government was awaiting the court's decision on whether the accused was an Indian citizen on 26 January 1950.

The amazing jurisprudential concept applied by the High Court in quashing the conviction but not acquitting the accused leaves Taskin Ahmed in the critical position of being made to face a fresh trial once the Central Government decides against him. Doesn't double jeopardy apply to him?

The curious thing is that if Taskin Ahmed were to be convicted and serve out his sentence of a year where would he go upon leaving prison? As a convicted Pakistan citizen he would be taken by the shortest route to the Wagah checkpost and pushed out of Indian territory. But would Pakistan embrace a

Muslim who has lived in India since birth in 1936 except for a few months in 1955 and 1957; whose father, Aziz Ahmed, mother Misraqun Bibi, uncles Safruddin and Nasruddin, aunts Mujada Bibi and Asti Bibi and a host of other relatives are in India; whose wife is Indian and whose children are Indian?

There are too many cases like that of Taskin Ahmed to discuss as stray incidents. But nobody has cared to find out. In the months after Partition many Muslims vacillated between a dream world and reality. There was no border except a hastily drawn red line on the map of India. Men, women and families moved across from one side to the other and back again. Once the passports were introduced, if they found themselves in Pakistan territory they took the easiest way back—by acquiring a Pakistan passport. There was no motive or intention other than to return home. Taskin Ahmed and the likes of him may have been foolish but they were not disloyal. That the law cannot distinguish between them is indicative of its inherent inadequacies as well as the failure of the law makers to perceive the predicament of shattered homes of Partition.

BIRTH OF ALIGARH MUSLIM UNIVERSITY: REBELLION'S LOYAL CHILD

Perceptions differ radically on 1857. A mutiny for the British, a glorious war of Independence for nationalist Indians and a peasant uprising for the Marxist student of economic history. Perhaps it was a culmination of all these. But the fact remains that Mangal Pandey, the unholy grease for the bullets, the mysterious *chappaties*, the Nawab of Avadh, the poet Emperor of the lost Moghul Empire, and just thousands of ordinary Indians all became curious filigree on a vast canvas of social and political upheaval in which, for the first time, a modern Indian nation stirred.

But the result of the uprising was disastrous. Thousands of Indians were massacred. The aging poet king of the Moghul Empire, Bahadur Shah Zafar, a desperate romantic and master of little beyond the redstone walls of *Lal Quila*, was taken into custody and, after a summary trial, exiled to Rangoon. The royal princes were butchered and the Moghul Empire permanently buried under the debris of medieval history. Muslim India surrendered its sovereignty but kept its spirit alive. Though Hindus and Muslims were alike involved in the fight for emancipation of their nation, the British perceived Muslims to be the motivators of the Avadh uprising. A reign of terror was let loose.

"Steeped in medievalism, broken-hearted and frustrated, Muslims found themselves in a blind alley without any resources of livelihood and reduced to a state of abject poverty and utter economic destitution," wrote Sir Syed Ahmed Khan, the founder of Aligarh Muslim University. He perceived that such evil times had befallen the Muslims of India that there was no calamity which they would not suffer. "Whatever crime was committed, it was always the Muslims who took the blame. Every evil stroke of fortune, every bolt hurled down from

heaven first sought out the homes of the Muslims."

Sir Syed chose the promise of a future for the Muslims against honour and the elusive vision of freedom. He considered the events with thoughtful application and produced his observations in a learned treatise. The conclusion: that history had made Muslims captives of poverty. They continued to pay the price of alienation from Western education designed to prepare Indians for a new role under a new Empire. Now, with the so-called "mutiny" to haunt them further, Muslims were in for hard times. Sir Syed Ahmed made up his mind to devote his life to injecting vitality of modern education into his community. With the help of like-minded Muslim intellectuals he planned a design for a private British style educational institution with adequate provision for Islamic studies, that was to be a nerve centre of Muslim reawakening. A series of meetings were held by the devoted band of Muslim followers of Sir Syed Ahmed and finally a resolution was passed to establish a Muslim college on 12 May 1872. A society was started in the name of 'The Muhammedan Anglo-Oriental College Fund Committee' for collecting subscriptions. The response of the community was far from overwhelming. Many conservative Muslims perceived Sir Syed's aspirations to be somewhat impractical, or even heritical. Others actually ridiculed him by asking him to dance like the *firangees*, white beard and all, to prove his determination to match the superiority of the white rulers.

Sir Syed Ahmed visited different universities and also studied the working system of English colleges and public schools. The universities of Cambridge and Oxford attracted his attention, especially for their organisation, residential system, traditions and tutorial system. But his desire to introduce the charm of Oxford and Cambridge universities was tempered by a conviction that the institution should not be a simple transplant of foreign models but an indigenous creation to match them. The main objective of the institution was to serve the purpose of the progressive generation of Indian Muslims through specialised courses of study, suitable to government services and private practice: for instance, law, medicine, commerce and management.

Sir Syed aimed to form a class of person who was "Muhammedan in religion, Indian in blood and colour, but English in

taste, in opinion and intellect." He had a wish to inspire the students of Aligarh with self respect, a sense of superiority with regard to social graces, a belief in one's own ability, within limits, to form and express opinions. He was against any system of education that "left the inner spirit dead." According to him, there were two kinds of education: *talim* and *tarbiyat*. One prepared a person for an occupation, the other was designed to bring out innate qualities of character essential for enlightened citizenship. The students and teachers of the institution would, according to his plan, "form a society of their own, whose notions and objects should be different from the contemporary society of Indian Muslims." In this was the matrix of both Sir Syed's preeminence as a Muslim leader and his estrangement with the traditional religious and spiritual giants of his age.

After considerable struggle and painstaking efforts, a school was established in 1875 and the high school finally came into existence in 1876. The foundation stone of the Muhammedan Anglo-Oriental (MAO) College was laid by Lord Lytton on 8 January 1877. "From the seed that we sow today," Sir Syed Ahmed declared on that occasion, "there may spring up a mighty tree whose branches, like those of the banyan of the soil, shall in their turn strike firm roots into the earth and themselves send forth new and vigorous saplings; that this college may expand into a university whose sons shall go forth through the length and breadth of the land to preach the gospel of free enquiry, of large-hearted toleration and of pure morality."

Though MAO College started as a Muslim institution, right from its inception there were Hindu students as well as teachers in the college. The first Vice-Principal (Second Master) was Shri Baijnath, who was next to Siddon in authority. The famous mathematician, J.C. Chakravarty, joined this college as Professor in 1888 and, in later years, acted as Registrar. The Managing Committee of the college consisted of 26 members out of which six were Hindus who were present in most of the meetings and who took prominent part in all its important decisions and deliberations. The most interesting thing about this college is that its first graduate was a Hindu boy named Ishwari Prasad and the first M.A. recipient was one Amba Prasad. Sir Syed was

against any discrimination on the ground of race, caste and religion. He said: "To be a Hindu or a Muslim is a matter of personal faith which has nothing to do with mutual relationship and worldly life." Sir William Hunter, the President of the Educational Society, remarked about the college thus:

> Among 259 students, I find 57 Hindus or nearly a fourth. On the whole Christian and Parsi lads have also received a liberal education within its walls. This liberality of mind pervades not only its rules and its teachings but the whole life of this place.

Though open to all, MAO College was a bastion of Muslim renaissance. Sir Syed was able to attract the cream of Muslim aristocracy from north India, or what David Lelyveld calls the scions of *Sharif* culture. The renaissance would remain incomplete without a major restatement on religion. But Sir Syed's endeavour to provide a fresh basis for *ijtehad* ran into stubborn resistence. By 1894, a new organisation of Sunni *Ulema,* the *Nadvat-ul-Ulema,* gathered for its first annual conference in Kanpur. Shibli Numani had a considerable role in it. Sir Syed's conception of a complete reform in the world view of the Indian Muslim was directly under challenge.

On the other hand, having hitched himself to the British wagon, Sir Syed was cold to the emergence of the Indian National Congress. But even as he was articulating the theory which defined Muslims in terms of membership of a *quam*, a people of common descent not the *ummah* of common belief, his hold on Aligarh was slipping. In 1898 Sir Syed died a bitter, utterly disappointed man. Aligarh was in trouble with enrolment, having fallen from 595 to 189 in two years, and the grants having dried up. Syed Mehmood, the founder's son and the famous judge, had been driven off the Bench and taken refuge in drinking. The leadership of Aligarh passed to Theodore Beck who, according to Lelyveld, "summoned up all his organizational and rhetorical powers to save the ship by leading a large scale campaign to revive the old dream of an independent university for the Muslims of India." In doing that he also ensured Aligarh's final renunciation of the Congress movement.

Aligarh still had an unfulfilled aspiration, an incomplete programme for what it had set out to achieve for Indian Muslims. It did not have a visionary to show to it that nationalism could make that concern redundant.

The themes of capitalist exploitation, socialism, nationalism and revolt against imperialism began to find expression in the works of important writers and poets of Aligarh and the reports of nascent nationalist sentiment attracted Mahatma Gandhi, Dr Ansari, Maulana Azad, Hakim Ajmal Khan and the Ali brothers to the campus in 1920. Tofail Ahmad Manglori, one of the distinguished Old Boys of AMU wrote a powerful critique of the demand for separate electorate. Syed Mohammad Toriki and Kunwar Mohammad Ashraf contemplated a 'socialist' system for India. Meanwhile, the Imperial government was making its own efforts to consolidate support amongst Muslims and granted Aligarh its charter.

Aligarh's most fortuitous contribution to the freedom movement came in 1920 when Dr Zakir Husain and Kunwar Mohammad Ashraf, in response to Gandhiji's call, left the MAO College along with around seven hundred students and joined the non-cooperation movement. Jamia Millia was thus born of Mahatma Gandhi's exhortations and the untiring efforts of the Ali brothers.

While one branch of Aligarh nationalism was establishing its roots in Delhi, the main trunk too continued to nourish immeasurable devotion to nationalism. In 1930 the Union Vice-President proclaimed:

> Let nobody say that Aligarh lagged behind anybody in India's battle for freedom.... To be indifferent towards anything that happens in a depressed country like India is criminal. To be ignorant of one's own political status is far worse than death.

For Tofail Ahmad Manglori, T.A.K. Sherwani, Choudhary Khaliquzzanam, Shuaib Quereshi and A.M. Khwaja, all powerful student leaders, nationalism was an article of faith. Aftab Hall, one of the hostels, took the lead in the 1936 strike against repression of nationalist activities as well as in the determined

opposition to the initiative by a small group to form an All India Muslim Students Federation (AIMSF). The stirring nationalist poetry of Asrarul Haq Majaaz provided the inspiration. But by 1939, as the political mood in the country began to change and gaps appeared amongst former comrades and colleagues, Aligarh's nationalist fervour suffered setbacks. AIMSF captured university forums and the romance of reviving the zeal of Sir Syed Ahmed Khan in establishing a special home for Muslims overwhelmed the nationalist control. As the Lahore resolution of 1940 stimulated further the growth of the Muslim League, Aligarh gravitated towards it. In a perverse reversal of perception everything was tuned to 'communal consciousness' —the ideas of Sir Syed, the Muslim solidarity for *khilafat*. Jinnah, for Aligarh an unlikely leader and in the past invariably unsympathetic to its concerns, unseated the late Muhammad Ali from the hearts of Aligarians in an inexplicable development. But a part of Aligarh did not cave in—A.M. Khwaja, Shaukatullah Ansari, Mohammad Habib, Ali Sardar Jafri and Rashid Ahmed Siddique represented the brilliant nationalists of Aligarh who refused to be swept away in the tidal wave of emotion.

Professor Mushirul Hasan, a Nehru Fellow, in his paper *Nationalist and Separatist Trends in Aligarh*, 1915-47 has argued:

> It is misleading to trace the origins of Muslim separatism to Sir Syed Ahmed and his immediate successors. As a movement running parallel to the nationalist mainstream with exclusively community concerns, Muslim separatism emerged as a political force only in the late 1930s and its roots lay in factors other than the supposedly inherent conflict between the Hindu and Muslim communities. Equally misleading is the insistence on a continuous and uninterrupted separatist stand among Muslims at the exclusion of various nationalist and radically oriented tendencies.

Dr Zakir Husain came back to Aligarh in 1948 as the Vice-Chancellor, reluctantly leaving behind a fledgling Jamia Millia. He said at the time:

> It seems to me that this institution has a great role to play in

> the development of India's national life. Were I not convinced of this, I would not have come to Aligarh.

Dr Husain was brought to Aligarh 'to restore its faculty which had been truncated by the Partition, and to nurse it back to a life that ensured that, in his own words:

> All the treasures of the past, from whatever source they might have come, are to be transformed into the common heritage of every Indian citizen, giving him a sense of common past achievement and acting as an inspiration for a common future endeavour.

But nursing Aligarh back to pristine glory was difficult and strenuous. Caught in the tragic dilemma of some saying "e nough has been done" and others screaming "how much more must you change?" the Vice-Chancellor of the 1980's faces the same despondent tones which urged Dr Zakir Husain to the limit of his patience:

> Sir Syed wanted to achieve something. He was not content to live just once; he wanted to live on. But his people wanted to kill him.

As he struggled to raise the calibre and confidence of Aligarh, even Dr Zakir Husain had to face criticism on the score of being a 'government agent' working to remodel the University to suit the rulers. Men who had sat in comfort when Muslims stood up to be counted amongst the galaxy of nationalists, used a sharp tongue to embitter the freedom so ardously won. But the Vice-Chancellor did not fall back on his friendship with the Prime Minister of the day or use the force at command of the head of an institution like Aligarh. He simply persevered and confided in a friend: "They just have to say something, and I shall die of it." On another occasion Dr Zakir Husain was faced with a massive student protest against a fee hike. A delegation of student leaders met him to express their intention to "destroy the university if the blatant capitalistic ploy to keep our proletariat students was not abandoned." Dr Zakir Husain

heard the students patiently and then placed the budget before them. "Take this to your rooms. Tell me what I can slash and I will reduce the fees," he said. The triumphant students returned to their hostels and examined the budget items. The socialists insisted that expenditure on the mosque could be cut but the other students would not accept that. They, in turn, proposed reducing expense on cultural activities, which, of course, the left wingers did not even want to hear. Finally, everyone agreed that the only dispensable item was the garden. Cheerfully they knocked at the Vice-Chancellor's door and placed their views before him. Dr Zakir Husain was shocked but he never expressed his anger. "Fine" he said, "but on one condition, that you must pluck out every flower and every leaf before tomorrow. You want Aligarh to be a dusty desert as before? So shall it be." Flowers and plants were his passion. The boys knew this but the onslaught of contained emotion overwhelmed them. They retreated without demur.

For Aligarh, Dr Zakir Husain did not die. Nor did Sir Syed. They suffered. But their critics disappeared, at best becoming footnotes in learned theses about resurgence of Muslim nationalism. But the lives of Dr Zakir Husain and Sir Syed Ahmed have left a nostalgic legend for an age in which policemen have frequented the desolate lanes where black *shervanis* and delectable wits once commanded undivided attention. Nothing sums up the feeling better than the 1957 Convocation Address by Dr Zakir Husain:

> I have learned a lot here and learned also to feel sorry for not learning more. It is here that I acquired the passion for devoting my entire life to the completion of Aligarh's incomplete work. Here I made friends and learned the value of friendship; learnt to work with others and by myself; learnt the art of compromise, to recognise life in its varied aspects, to see clearly the evils in our national life and to find my eyes moist with tears at its sorrow. Here, again, I felt my heart heaving with desires and resolves. I learnt to regret my own arrogance and my mistakes; to catch fire instantly like dry leaves and burn away to ash. But, also, here I learnt the lesson of burning slowly like charcoal and to practise the art of protecting

> the glow from the harsh winds of life. I learnt the necessity of participating in the affairs of society to develop one's character; performed here for the first time the experiment of consciously living in solitude and in society, and comparing their effects; learnt here fidelity; learnt obedience; learnt respect, respect for elders, respect for equals, respect for the young and respect for oneself. I learnt freely and faithfully to conform to the strict laws of this great temple of learning, but I acquired also the power of rebellion, when once I found the system to be against the dictates of my conscience. I became an outlaw and was expelled.

Dr Zakir Husain had left Aligarh in 1956, before his second six-year term expired. For his friend, Rashid Ahmed Siddique, it was a symptom of Aligarh's failure to reconcile with its role in history. Its group hostility, the conservative-radical dichotomy which invariably surfaced in terms of 'government lackeys' and 'devils advocates' has continued to sap its energy since Independence. It may not have retained a meaningful position in substance but both in style and in sentiment it remains a singular symbol of Muslim life in India. Aligarh may no longer be the centre of Muslim politics but recent history has shown that Muslim politics cannot survive in its defiance.

Chapter Eight

ALIGARH MUSLIM UNIVERSITY'S MINORITY CHARACTER: ROSEGARDEN'S REVOLT

In 1965 a terrible thing happened in Aligarh. It was an incredible deviation from Aligarh's character. The Vice-Chancellor was mercilessly assaulted by students. A 'modern' Muslim Education Minister took that opportunity to introduce sweeping changes in the Aligarh Muslim University Act, 1920. Thus was planted the seed of the 'black law' of 1972, shaped by Professor Nurul Hasan, as Minister of State for Education.

In 1961 the Aligarh Muslim University Inquiry Committee, which was set up in consultation with and at the instance of the Government of India, had made its report and stated in Chapter Eight:

> How this University came into being is well known. After a careful study of the then prevailing conditions in India, that great man, the late Sir Syed Ahmed Khan, arrived at the conclusion that the backwardness of the Muslim community was due to their neglect of modern education.... For him Islam was a progressive force and he wanted young Muslims to be brought up in a liberal atmosphere, where they would be able to receive education in Western literature and science along with instruction in their own religion and traditions.... (His) devoted band of workers decided to establish a Muhammedan College and, on 12 May 1872, a society called 'The Muhammedan Anglo-Oriental College Fund Committee' was started.

It was clear to the Committee that Aligarh was established by the Muslims of India. Sir Syed Ahmed had himself announced the birth of the Anglo-Oriental College in terms which left little doubt about MAO College's pedigree:

> There have been before schools and colleges founded and endowed by private individuals. There have been others built by sovereigns and supported by the revenues of the state. But this is the first time in the history of the Muhammedans of India that the college owes its establishment not to the charity or love of learning of one individual, not the splendid patronage of a monarch but of the combined wishes and united efforts of the whole community.

At a meeting of the Muhammedan Anglo-Oriental College Fund Committee on 10 February 1873, one of its most distinguished members, Syed Mohammad Mehmood, son of Sir Syed Ahmed Khan, while explaining the scheme for the College, clarified that the intent was to found an university not just a college.

Sir Syed died in 1898, leaving behind a financially floundering institution but considerable devotion to the idea of a Muslim University. By 1920 the Committee had successfully negotiated legislation and the University came into existence, ironically just when some of its brilliant alumni felt that, for the present, its role in the history of Muslim India was over. In 1951 some amendments were introduced in the Act to reflect Aligarh's participation in the life of an independent India, but the essential character of the University as a 'minority' institution was not altered.

However, in 1965, the shocking incidents involving the campus assault by students on the then Vice-Chancellor, Nawab Ali Yavar Jung, gave Mr M.C. Chagla the excuse to intervene. Of course, his interference was inevitable but the unfortunate events hastened it. First an Ordinance was made and subsequently the Aligarh Muslim University (Amendment) Act, 1965 was passed in Parliament. The main amendment brought about was in Section 23 of the 1920 Act by virtue of which the University Court could no longer remain the supreme governing body. The Constitution of the Court was drastically changed and it became practically a body nominated by the Visitor.

A curious political paradox was created by the 1965 legislation. The Aligarh movement was born as an endeavour by enlightened Muslim leadership to prepare Muslim students for

greater participation in public spheres. Sir Syed Ahmed, though virtually revered today, faced an amazingly reticent and sceptical Muslim community. He provided the foundations of modernism but could not insulate those foundations from the waves of Muslim separatism. But in 1965, in reaction to the Government's attempts to assimilate Aligarh into the mainstream of central pattern education, Aligarh had to resort to conservative slogans to make a point. Indeed, though a few persons resisted the movement against the 'black law' of 1972, AMU became both, for Aligarians and to ordinary Muslims of north India, a symbol of Muslim independence and self-reliance. The intensity of feeling and area of impact was sufficiently great to make it a national issue, beyond the traditional catchment area of the University. Hyderabad faced a few tense hours after a few Muslim divines, under the pretext of calling on the late Fakhruddin Ali Ahmed, then a Union Cabinet Minister, for a discussion on *Waqfs,* posed discomforting questions on the 'minority character' of AMU. When the Minister explained that constraints of collective Cabinet responsibility did not permit him to speak out against the Government stand, he was offered a piece of blank paper to sign his resignation on. One person removed a banner tied to his waist and displayed it in the Minister's room. "Resign," they all said. "Resign if you cannot speak for your community." Fakhruddin Ali Ahmed was, understandably, perturbed. On his way to another function he learnt that all the agitators had been taken into custody. The festival of *Id* was only two days away. The Minister thought it would be cruel to keep such devoted men away from their homes and sent a message to the Police Commissioner to let them go free.

Similarly, most Muslim MPs and Ministers of the Congress party were approached by groups of Aligarh activists. Of course the worst of their wrath was reserved for Prof Nurul Hasan, a former faculty member of AMU. Prof Hasan, a leading historian and a man of great girth and greater accomplishment in the field of intellectual activity, had earnestly believed, as do so many people even now, that the logical development of Sir Syed Ahmed's dream for Muslims was to ensure an administrative structure for Aligarh which would not be easy prey to parochialism and conservatism. Unhappily, that could only be done by

undermining the democratic model to a large extent. Prof Hasan presumably also underestimated the sentimental backlash and the dormant symbolic significance of AMU. The reaction to his Act of 1972 was disastrous, cutting short perhaps what might have been a very successful career in national public life. But despite the volatile opposition to Prof Hasan and his 'black law' of 1972 and the favourite Aligarian taunt of "he cannot come back to Aligarh", amongst many of the Action Committee activists there is a modicum of respect for the man for the courage and honesty with which he faced Aligarh as a Minister. When the police guards at the State Guest House tried to push the students away he came out himself and welcomed them to unburden themselves off all their invectives.

At that time, Arif Mohammad Khan was a mercurial student leader at Aligarh. His cousin, Imtiaz Mohammad Khan, now an MLA in Uttar Pradesh, was the more articulate of the two and, by popular opinion, was given a head start in the Union Presidentship elections in 1972. An eleventh hour caucus was held in the University mosque and Imtiaz was prevailed upon to withdraw, in the interests of the movement for 'minority character'. From that moment Imtiaz lost the race as Arif used the University platform to voice his apprehensions on major issues involving Muslim interests. Soon Piloo Mody visited Aligarh and Arif Khan became an ardent follower of that irresistible wit. By 1978-79, Arif Khan had become a Deputy Minister for *Waqf* in the Janata party government in UP. Then, as the influence of Dr Nurul Hasan gradually faded from Congress echelons and a new Aligarh representative was needed in the Congress party, Arif Mohammad Khan, having resigned from the Janata party and government on the Shia-Sunni question, found a place as a Joint-Secretary at the AICC(I) headquarters in New Delhi. His changed political persuasions did not distract Arif Khan from his cradle of leadership. He himself stayed clear of any serious initiative to intervene in the Irfanullah/Irfan Habib/Syed Hamid episode, but exhorted Irfanullah's colleagues not to become supplicants and to remain steadfast in the independence so laboriously won by 'us.' Arif Khan's estrangement with the later generation students was almost complete. He acquired the image of a maverick politician. It may also have

had something to do with the fact that Irfanullah Khan and Imtiaz Mohammad Khan, who assisted the group, are both related to Arif Khan and treat him with considerable political caution. But much later, after the Congress government gave back to Aligarh its autonomy and 'minority character', Arif Khan, by then a Minister of State, made a belated attempt to recapture the magic of student leadership. He denounced the administration of Vice-Chancellor Syed Hamid and his Pro-Vice-Chancellor, as that of a Collector and a Naib Havaldar, using the forum of the freshly constituted University Court, upon which he had a seat as an Old Students' representative. But Aligarh does not forgive easily.

The political folly of 1965 went unnoticed when, like all political disputes, Aligarh, too, came before the Supreme Court in 1968. In *Azeez Basha's* case, the Supreme Court rejected the claim of the Muslim based upon Article 30(1) of the Constitution mainly on two grounds:

1. That Aligarh Muslim University was not established by the Muslims inasmuch as it was established by an Act of the legislature; and
2. That the scheme of the 1920 Act did not confer the exclusive right to administer the University on the Muslims.

If the view taken by the Court is correct, it would mean that a religious or linguistic minority is debarred from establishing an university inasmuch as an University can only be established by an Act of the Central or State legislature. Thus, so far as university education is concerned, Article 30(1) would become moribund. The Supreme Court cleared the path for further intervention, which came later, with Prof Nurul Hasan's initiative.

The Minorities Commission (Messrs, M.R. Masani, M.R.A. Ansari and V.V. John) in its report to the government stated the problem succinctly thus:

> We regret to observe that the amendments to the Act of 1920 by the Aligarh Muslim University (Amendment) Act, 1965, not only affected the rights under Article 30 but completely

undermined the autonomy of the University. The Act provided for an immense concentration of power in the hands of a nominated Vice-Chancellor. This, we might add, was completely against the universally accepted principle of autonomous administration of universities.

By 1980, Aligarh's Old Boys and the Action Committee had exhausted their detractors. They had successfully made Aligarh a prickly point of contention and most major political parties turned to the path of least resistance by commiting themselves to the 'minority character' demand. The Congress party manifesto, too, made an explicit commitment but it was to take another three years before Education Minister Shiela Kaul rushed the Amendment Bill through Parliament at the fag end of a session. This seems to have been prompted by the decision of the Supreme Court to review *Azeez Basha* in a case relating to another educational institution. When the great moment came to reward Aligarh for its fifteen-year struggle to prevail its independence, there was no fanfare or celebration. Almost as though the government did not know what it had done; it did not even expect any public show of gratitude. For fifteen years a meaningless battle had been fought with transitory 'saviours' and 'savages' healing and drawing blood periodically. The real issues were lost soon after the battle began. The victory seemed hollow as a spate of stay orders from the Allahabad High Court virtually paralysed the proceedings of the University and, in a strange historical irony, the governors of Aligarh looked to an outsider to adjudicate upon their differences.

A WASTED GENERATION AT ALIGARH: LIBERALISM IN CONFUSION

> The way Aligarh participates in the various walks of national life will determine the place of Muslims in India's national life. The way India conducts itself towards Aligarh will determine largely, yes, that will determine largely the form which our national life will acquire in the future.
>
> Dr Zakir Husain, then Vice-Chancellor
> Aligarh Muslim University

Though the Aligarh Muslim University (AMU) Action Committee for restoration of 'minority character' had been in action, so to speak, for almost a decade and saw some vigorous advocacy during the Union Presidentship of a brilliant speaker, Javed Habib, it was during the tenure of his successor, Irfanullah Khan, the demure Pathan from Bulandshahar, Uttar Pradesh, that matters came to a head resulting in the suspension of several student leaders from the university for six years.

The spark for this unhappy saga of Syed Hamid's Vice-Chancellorship was an unfortunately candid *Indian Express* interview by AMU's brilliant historian, Irfan Habib, whose academic brilliance finds a back seat only to his devotion to a Marxist view of the world. Quite naturally, many Aligarh students not of his persuasion have always found his Marxism offensive. Irfan Habib ran down the University in not being able to control the conduct and quality of its product. He expressed, what was perhaps true, but which did not lie in the mouth of a senior faculty member and the member of University authorities: that Aligarh's alumni were not wanted in good jobs. The students were incensed and launched an agitation for Irfan Habib's suspension. The Vice-Chancellor dug in for a long confrontation and the University functioning was hopelessly disrupted. Syed

Hamid went to Aligarh with great determination to check certain developments which might have been uncommon in other major universities of the country but which, he believed, could not be allowed to erode the potential of the premium institution of Indian Muslims.

It was during the course of deliberations at the Prime Minister's House in New Delhi that a frightening aspect of Indian politics became apparent to me. Mr Rajiv Gandhi has just begun to take interest in public issues to help Mrs Gandhi in the months following his brother's sad demise. The AMU agitation became critical because a significant section of Muslim Congress leaders were pushing steadfastly for restoration of Muslim minority character' of the University as perceived in the 1920 Act which gave AMU its status as a statutory university. These leaders were looking ahead to the considerable impact they believed the settling of the 'minority character' issue would have on Muslim middle classes in northern India. It was also hoped that the rapproachment between AMU and the Congress party, a relationship embittered as a result of Professor Nurul Hasan's well meaning but politically disastrous attempts to bring the University under tighter control of the Central Government, would be crowned by Mrs Gandhi being invited to address the Union and being honoured in the exquisite style of a minute-long shower of marigold petals. Now, as the pressure grew for restoration of 'minority' status, even the Supreme Court decided to reconsider the famous *Azeez Basha* case which first upheld the view that AMU was not protected under Article 30 of the Constitution. Appropriate legislation was on the cards and this may well have been sensed by Irfan Habib. The agitation provoked by his conscious effort to preempt any decision on 'minority character' threatened the tenuous link between Aligarh and the Congress. Certainly for *Indian Express* the Irfan Habib interview was not the first shot of the 'minority character' issue. Some months earlier Arun Shourie, then an Executive Editor of the paper, had written a sharp critique of AMU, basing his arguments on widespread nepotism in the faculty.

Mr Rajiv Gandhi received the Union representatives very warmly and offered them cold drinks in his office as a rare gesture of hospitality. His initial reaction to the University

administration's adamant postures was one of dismay. Vijay Dhar was then handling Mr Gandhi's affairs and was very admirably suited, by background and nature, to gently reassure the boys and find a workable solution. Over the weeks an extremely affectionate relationship developed between Aligarh's student leaders and Vijay Dhar. Attempts were being made to close the chasm between very angry student leaders and a very rigid Vice-Chancellor, who enjoyed the Prime Minister's confidence and her Principal Secretary's regard. Then suddenly the picture changed.

One evening during early summer of 1981, I and Major Vijay Singh, a young Congress leader who was deeply involved in helping the students, were waiting outside Vijay Dhar's office at 1, Akbar Road with some fresh proposals on the Aligarh stalemate. Unusually he took considerable time with a visitor, almost three-quarters of an hour. Finally a short young man in blue jeans and T-shirt and sporting an empty rucksack emerged from the room. At a second glance I recognised him to be M.J. Akbar, then Editor of the powerful magazine *Sunday*. We greeted each other cordially and I did not give the matter any further thought except noting quietly that a journalist who cried himself blue in the face castigating caucus politics and 'one Safdarjungwalas' and who often proclaimed that India's pulse throbbed in the untidy alleys of Chota Nagpur, should have looked so cheerful within the sacred walls of No. 1. But there was a rude awakening for me yet. Vijay Dhar greeted me with an ominous pronouncement as soon as I entered: "I have been doing my homework. These Aligarh boys are rabid communalists." He tapped a thick file, quite obviously left behind by M.J. Akbar. I later established that the file was the one from which, only weeks before, *Sunday* had carried a cover story entitled *Aligarh's Communal Students*. M.J. Akbar had the byline.

It does not require an experienced mediaman to tell you that this was not entirely ethical. But what is worse, further queries revealed that the editor had visited Aligarh for the story and had actually lodged with Irfan Habib. He had made no effort to meet the boys. His credentials as a secular Muslim journalist who was not afraid to speak the truth about Moradabad riots

had given him the *locus standi* of an authority on the subject of Muslims. His cover story, especially for many Hindus who were hearing of Aligarh for the first time, tainted both Aligarh and its alumni. His clandestine caucus briefings sidetracked and derailed a relationship crucial for the Congress, Aligarh and Muslims alike. And I do not think he will ever forgive me the chance discovery.

An interesting side note at this point is that, much later when the Aligarh Amendment was steered through Parliament by Mrs Shiela Kaul, and the Aligarh University Court was constituted, M.J. Akbar figured as an unsuccessful candidate under the category of persons representing the learned Professions, Industry and Commerce. He secured 4 votes to Dr Farooq Abdullah's 44!

Thanks to M.J. Akbar and to other contributors like some young Muslim MPs who ridiculed the boys for "begging" assistance, Aligarh boys and the government drifted apart. The widening rift culminated in a most distressing situation when, on 25 May 1981, two boys were injured in police firing, one fatally. Like many police firings, in this case too the shots were clearly fired to kill. Aftab, the boy who died, was callously dragged fifty yards into the VC's lodge and left to bleed on the lawn. "He is not one of ours," an University official is reported to have said. "But he was a human being," was Mr Rajiv Gandhi's retort when he was told the tragic tale by the boys during a long and candid conversation at the Rae Bareli Inspection Bungalow during the Amethi campaign in the summer of 1981. The boys then kissed Mr Rajiv Gandhi's hands and devoted themselves to his election. But once the euphoria wore off, they were stumped again some how. Upon return to Aligarh they found the local administration even more hostile. Some of them were even arrested, others externed from the District. Gradually their grievances became stale. Their resources became depleted. Their stamina became exhausted. Their names and faces faded away. Just their frustrations survived.

Like so much else in our lives, the manners and the management of AMU during the period of this crisis cry out the verdict: "It could have been avoided." But there were other strains too; strains that seem to have gone unnoticed in the public mind.

There was a personal tragedy. That of an honourable man, Syed Hamid. There is also, and to that extent Syed Hamid's experience is remarkably representative, a chronicle in this of the continuing dilemma and self consciousness of the liberal Muslim in modern India.

Vice-Chancellor Syed Hamid, a distinguished IAS officer and a devout Muslim, was a complete opposite of his predecessor, A.M. Khusro. Khusro was a brilliant economist and, in matters of public relations, a diplomat *par excellence.* When Khusro became Vice-Chancellor of AMU, the University had not fully recovered from the horrifying experience of a student mob assault in 1965, on then Vice-Chancellor, Yavar Jung Khusro, by nature affable, approached the University with an extremely accommodating attitude which permitted immense liberties to student leaders. Aligarh has a peculiar tradition of acquiring 'seniority' amongst students by pursuing as many different courses as are available. Each time one course is completed, another form is lodged with the admissions office. The influx of students from Bihar and Uttar Pradesh and the increasing pressure of volatile student leadership strained the University facilities and discipline alike but allowed Khusro to complete his term in relative peace. It was perhaps the shock of being subjected to the unnerving sternness of Syed Hamid and his most extraordinary uncompromising personality, in contrast to the easy accommodation of Khusro, that led to the initial resistance against the new Vice-Chancellor. But Syed Hamid went to Aligarh determined to put things in order and he proceeded to do just that by ensuring that University teachers did not easily get paid leave to take up lucrative assignments in the Middle East; that examination schedules were adhered to very meticulously; that admissions were restricted to meritorious applicants and the system of nominations at the behest of student leaders was completely eradicated. It is quite possible that, despite reservations and disenchantment amongst teachers and students, AMU during Syed Hamid's tenure would not have seen large scale agitations but for the provocation excited by Irfan Habib's interview to the *Indian Express.* The timing of the crisis was a crucial factor in its genesis. It was certainly not a disguised explosion of some other grievance and frustration. If the conse-

quences are anything to go by, the agitation led by the Students Union was a predictable and inevitable response to Irfan Habib's scathing attack on the University and particularly on some of its students whom he described as "criminal" and "communal". Some people believe that Arun Shourie contrived the entire situation. There is some independent corroboration for this in Irfan Habib's private conversations with friends, where he admitted that he was not all that keen to put these matters on record.

It was argued on behalf of Irfan Habib that he was merely exercising his democratic right of free speech and, technically, that is certainly true. But there are always implied or express restrictions imposed due to the situation and status of the speaker. A member of the University Executive Council and a senior University professor should surely first exhaust internal remedies before launching a public tirade? Admittedly there can be a difference of opinion on a matter of degree. But the freedom view must at least be prepared to accept the corresponding right of the aggrieved students to register a protest. At one stage, clearly, even the Vice-Chancellor took a sound view of the protest by instituting a judicial enquiry and stating that Prof Habib would cease to function as Dean. However, suddenly, Syed Hamid changed his stance and gradually began relying upon police presence to settle the issue. This change was obviously prompted under the influence of the supporters of Prof Habib. The closure of the University was taken as a signal for confrontation by the students but they restrained themselves in the hope that some public men would bring about a reconciliation. Hamid's advisers, however, prevailed upon him to use this occasion as a final showdown with the powerful student leaders in an effort to annihilate them. The result, of course, was the death of Aftab and the loss of an academic year and reputation of a Muslim university.

Why did a man of Syed Hamid's calibre and integrity fail so miserably? There is the usual explanation of caucus conspiracies and clandestine coteries. But that, in itself, is a symptom of failure. Syed Hamid was no stranger to AMU, having been a student there. He was no cold and materialistic Marxist who did not care to understand what emotion meant to AMU's alumni.

He was not a man who did not care for his community. And yet he failed. He failed just as all educated liberal Muslims will fail if they continue to look over their shoulders. Left alone, Syed Hamid would have achieved wonders for educational standards and discipline at Aligarh. He once described himself as being prepared to act as a "father" to Aligarh students though not as a "mother". But the ambition of Irfan Habib forced Syed Hamid into an isolation he could not shake off. As he struggled to keep ahead of his detractors, even *Sunday* magazine betrayed him with the headline "*Aligarh VC No Longer Pro-Left*". Syed Hamid was too valuable an asset of the Muslim community to be left in the crossfire of guile and emotion. He was too upright a man to escape the fire. But the community leaders who played with his fortune to secure their own deserve contempt.

The devious pressure which liberal Muslims have to face is reflected in the *Sunday* cover story of 1 February 1981 in which M.J. Akbar describes AMU as "reeking of ignorance, prejudice and communalism," where "bigots have taken charge". The focus of the story was one Manzar Safi, reported to be involved in communal riots elsewhere, as though the entire controversy was about students like him. Akbar's judgment was crisp and categorical. "The truth is that the students are against Prof Habib because he is progressive and a threat to some communal elements who want to make the AMU campus their fortress."

But whatever may have been the history of Manzar Safi, nobody, least of all M.J. Akbar, ever seriously attempted to prove that the Union President, Irfanullah, and his team, which included Salim Peerzada, Servaish Narayan Mishra, A.Z. Amani, M.A. Fatmi, Zameer Abbas, Kamar Alam and Furquan, were ever influenced by communal forces. Indeed, throughout their University career these boys had vigorously opposed the Students Islamic Movement and trounced its candidates in the Union elections. Their mode of agitation was in no way at variance with commonplace agitations in Indian institutions elsewhere. Quite possibly at times their objectives overlapped those of a small minority of conservative Muslims. But that can hardly be held against them. Of course there were some notori-

ous characters ensconsed in the University who lent support to any activity of the student leaders. These persons acquired heroic status in fighting Hindu fanatics during the prolonged period of communal disturbances and had found safe havens in the University hostels. But that was a specific problem to be treated as such and not used as an excuse to paint the entire Aligarh student community as communal.

Students like Irfanullah were not self-conscious about being Muslim. Their idiom and style was Muslim. They were not afraid to be what they were and it was cruel and dishonest to dismiss them as criminal and communal. The fact that communal organisations may sometimes espouse the same cause does not rub their illiberalism on to men like Irfanullah. They (the boys) had political ambitions, but that in itself ought not to condemn a man if the claim is a legitimate one. Persons with political allegiance to communal political groups would not have offered to condemn them from public platforms as Irfanullah and his boys did. And it speaks of their faith that they did not give in for the entire tenure of Syed Hamid. Zameer Abbas is still waiting to be allowed to pass his M.Sc. Final.

This fact has remained obscure despite the passage of years. And it has been the constant preoccupation of the Marxists of AMU to paint student leaders in the green hue of the *Jamait-i-Islami*. They are, regrettedly, very astute and intelligent men and argue an effective brief in a country where the elite remains permanently burdened with the guilt of capitalism and looks for symbolic opportunities to seek salvation. The stature, academic and otherwise, of these men is not easily disentangled from their political pursuits.

Irfan Habib's reputation as a scholar of medieval Moghul history as well as the reputations of several of his colleagues and supporters in the history faculty of AMU, has travelled across the globe. In addition to being a scholar of high repute, he is also a teacher regarded with great respect and affection by his students. In contrast, the group of historians and other faculty members who have opposed him over the years can boast of just one stray example of eminence, Professor Nizami. It is not surprising then that Irfan Habib and his group were

able to capture the Vice-Chancellor's attention in the crucial weeks of the agitation.

The precept that Syed Hamid overlooked was that a liberal Muslim does not have to deny his Muslim heritage to be secular. Furthermore, he does not have to prove to anyone, least of all to India's confused intelligentsia, that he is secular. Besides, there is more to Muslim heritage in India, as indeed there must be elsewhere, than pious rituals. There is the Muslim way of life, the Muslim aspiration and, in its simplicity, just the feeling of being a Muslim. None of that is communal. These are all self-referential sentiments, the essence of true liberalism. Being communal involves sentiments that refer to someone else, some other community.

Aligarh almost lost a generation because of a particular group's thinly disguised attempt to sabotage the fulfilment, by the Congress party, of its commitment. "An university already inundated in communalism and corruption could be submitting to 'harakiri' by accepting the implications of minority character," went the argument. Liberals slipped. They forgot that the Aligarh debate was not, in any case, about what is the right way to run a minority university but whether the minority has the right to run an university. These are arid distinctions for a progressive. But a liberal must not allow a change in the rules of the debate. He must not forget that just as a beard alone does not make a Muslim, learning of dialectic materialism does not make a prophet. When the Aligarh bell sounds, he must not ask for whom it tolls. It tolls for truth.

MAULAVIS, MAINTENANCE AND MINISTERS: THE SHAH BANO CASE

Mohammad Ahmed Khan v *Shah Bano Begam*, a case decided by the Constitution Bench of the Supreme Court of India on the issue of maintenance awarded to a divorced Muslim woman under Section 125 of the Code of Criminal Procedure (CrPC), has become a *cause celebre*. The versatile and youthful former Union Minister of State, Arif Mohammad Khan and the veteran nationalist, also a Union Minister of State, Ziaur Rehman Ansari, have crossed theological swords in an unprecedented Parliamentary confrontation. And the dust continues to fly. Seldom has our nation, the Congress party and the government been so openly divided on an issue so small by itself but the repurcussions of which have a potential unimaginable.

Curiously, Arif Mohammad Khan, hailed as a 'progressive' by, among others, the *Hindustan Times*, commenced his political career barely ten years ago in Aligarh as a student leader on the 'non-progressive' political tripod of 'minority character' for Aligarh Muslim University, official status for Urdu and preservation of Muslim Personal Law. On the other hand, Z.R. Ansari has thus far been associated with the temperate secular Muslim leadership, inheriting the looks and mantle of Maulana Abul Kalam Azad. But his reaction to *Shah Bano* has grown steadily more vociferous with the second speech in Parliament (Lok Sabha) being a virtual vitriolic onslaught on former Chief Justice Y.V. Chandrachud.

The immediate response of Muslims to *Shah Bano* was a sullen silence which obscured the intensity of reaction both against the judgment and its laborious defence in Parliament by Arif Mohammad Khan. On the other hand, a curious applause surfaced from certain unlikely quarters. Upper class Muslim socialites, left wing Muslim intellectuals and a motley crowd of social reform activists received Arif Khan's pronouncements as a

signal of Muslim leadership's admission of Islamic law's inadequacies. Initially Arif Khan basked in his sudden glory and newspaper correspondents led him further into the tunnel of progressive thought. Khan's belated attempts to disassociate himself from any radical position fell on deaf ears. Arif Khan became the byword for not what he really said but what interested people believed he said. Indeed so intense is the feeling against him amongst Muslims that any attempt to be "fair" to him in reporting his actual words is taken as "walking on thin ice"!

Muslim reaction began to surface, first in minor ripples and gradually built up into a human wave of men and women which overwhelmed major cities of India. Perhaps for the first time since Independence, a rudderless and leaderless Muslim community expressed solidarity and was quite overjoyed at doing so.

The debate on *Shah Bano's* case often confuses humanitarian considerations with the reasoning resorted to by the Supreme Court. Furthermore, Arif Mohammad Khan's speech is often wrongly assumed to be 'progressive' in the sense of giving the go by to traditional approaches to Islam. Lest the issue go by default, it becomes incumbent to analyse what the Supreme Court purported to do, what Arif Khan intended to defend and, indeed, what it is that the reformers or reform pretenders think they are applauding.

It may be pertinent to mention that Shah Bano's own belated doubts about the validity of the Supreme Court judgment is not relevant beyond reflecting on the hollowness of the legal propositions or, as lawyers say, the ratio of the case. On the other hand, the cry of dismay from quarters traditionally unfriendly to Muslims is significant. Bharatiya Janata Party and 'progressive' women's groups have even suggested that Shah Bano may have been coerced to recant. That is a very strange view of life. When a person says or does something they like, the world is perfect. But if that person says something with which they disagree, there is talk of "fascism" and "evil forces"

In the one hundred minutes that Arif Mohammad Khan spoke in Parliament, he made the following points:

1. That the government has categorically denied any intention whatsoever of tinkering with Muslim Personal Law with

a view to impose an Uniform Civil Code as envisaged in the Directive Principles of the Constitution of India;

2. That the extent to which the Supreme Court exceeded its brief in attempting to persuade the government to advance towards an Uniform Civil Code, the judicial dicta was quite unacceptable;

3. That the *Shah Bano* case simply decided the issue of whether Section 125 and 127 of the CrPC contravened or conflicted with 'Muslim education' or 'Islamic law';

4. That the *Suras* of the *Quran* which are relevant to the issue at hand are *Sura* 2, *Ayats* 228 to 231, 236, 237 and 241; *Sura* 65, *Ayats* 1 to 7;

5. That if it is true that Islam did not admit rights of women then the rights enumerated in great abundance in *Shariat* law, in contradistinction to the appalling neglect of women in pre-Islamic days, were inadmissible. It follows that a law granting rights to women cannot be un-Islamic;

6. That the purpose of Section 125 is to prevent vagrancy and destitution and the remedy is available only to helpless women unable to keep body and soul together and, to quote the Minister, "perhaps in such cases where she has no mother or father, perhaps who has no brother or, if there is a brother, he is reluctant to support the woman";

7. That *mehr* or dower is a payment made in consideration of marriage and not upon divorce;

8. That divorce, by pristine *Quranic* law, must be pronounced three times at appropriate intervals to be effective and irrevocable but which, in practice, was allowed to be pronounced at one particular time under the stewardship of Hazrat Umar;

9. That it follows that departures have been made from the strict letter of the *Shariat* law;

10. That vide *Ayat* 229 of *Sura* 2: "It shall not be proper for you while divorcing your wives to take away anything out of what you have given them"; vide *Ayat* 241: "For divorced women maintenance should be provided on a reasonable scale"; vide *Ayat* 229 again: "Divorce is twice. Thereafter either retain her honourably or release her kindly. And it is not allowed to take away all of what you have given to her."

The Supreme Court, speaking through former Chief Justice Chandrachud, had a considerably variant approach:

1. Women have had a somewhat raw deal in most religions, including Islam;
2. The religion professed by a spouse or by the spouses has no place in the scheme of Sections 125 and 127;
3. The liability imposed by Section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution;
4. The statutory rights available to the divorced wife are unaffected by personal law;
5. Section 125 overrides personal law, especially of Muslims, if there is a conflict;
6. However there is no conflict once the *Quran* provides for maintenance beyond the *iddat* period vide *Sura* 2, *Ayat* 241;
7. Though, from Parliamentary records, it is clear that government introduced Section 127 for preserving Muslim Personal Law, the Court was inclined to ignore that;
8. The state was remiss in its responsibility to introduce a Common Civil Code.

Of course *Shah Bano's* case cannot be isolated from several background facts admirably discovered and portrayed by Saeed Naqvi in a syndicated column. To begin with, like many other similar cases, the seed of litigation was planted in a dispute regarding property. Shah Bano herself had close family members engaged in flourishing business. There were bruised egos and contending *maulavis*. The Supreme Court did not advert to some relevant considerations which were obviously available to the trial court, such as the actual amount of *mehr*, etc.

It is apparent from the summary of Arif Mohammad Khan's speech that he certainly was not advocating interference with Muslim Personal Law, nor indeed would he have the courage to do so. The fact that the reform pretenders have conveniently assumed that the Minister was questioning Muslim Personal Law reflects their dishonesty of purpose. Of course their bouquets turned out to be pretty sharp and prickly for the Minister.

Furthermore, it would be wrong to assume that Arif Mohammad Khan was speaking for the government because there is very little evidence to show that the government had made up its mind at that stage. The only initiative by the government at this stage was a late night meeting of two dozen Muslim MPs and Ministers with Mr M.L. Fotedar, the Prime Minister's political advisor. It was quite expectedly a divided house. But at least one senior Minister stubbornly maintained, despite doubts expressed by his colleagues, that Muslims were pleased with the judgment. Subsequent developments, including the Prime Minister's reiteration of Mrs Gandhi's commitment to preserving Muslim Personal Law and Ansari's lively response to Khan, have more than established that the latter's voice was in political wilderness. He may have hoped that the government would endorse his view but, as it turned out, he had more appreciation from the opposition than from the treasury benches. There may be something to be said about the need for being circumspect in sensitive matters. A debate in the party prior to Ministers committing themselves in Parliament could have avoided a lot or trouble.

The decision in *Shah Bano's* case is the judgment of five judges of the Supreme Court. Yet, apart from departing from the reasoning of Justice V.R. Krishna Iyer in earlier cases, *Shah Bano* arrives at the same result as in the cases of *Bai Tahira* and *Fazlunbi*. The unhappy tone of the judgment was set by the opening paragraph:

> To the Prophet is ascribed the statement, hopefully wrongly, that "woman was made from a crooked rib, and if you try to bend it straight, it will break; therefore treat your wife kindly".... It is alleged that the "fatal" point in Islam is the degradation of woman.

Towards the end of the judgment the Court held:

> A Common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat on this issue. It is the State which is charged with the duty of

> securing an Uniform Civil Code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another...."

The point of view of a large number of citizens, even if it is unpalatable, cannot be dismissed in a cynical whisper. The question of codifying Islamic law to suit reasonable expectations of modern times and to accommodate legitimate interpretations compatible with contemporary reality may have greater force than the completely different exercise of an Uniform Civil Code. In the ignorant mind, the battle for the Civil Code is to be fought against two obvious bastions, i.e. the right to four wives under Islamic law and the so-called 'arbitary' right of a man to divorce his wife. This seems patently an argument of envy. But there are powerful arguments against interference as well.

So far as reform is concerned, it is essential to know what Islamic law provides before proceeding to fill in imaginary lacunae. Professor Tahir Mehmood, in his recent lectures and writings, has shown that many of the popular notions about Islam have nothing to do with *Shariat*. These are discussed later in the book. Besides, the relative superiority of *Shariat* over other systems lies in examples like some succour for a widow whilst secular law restricts it to a divorced wife. Then again, Islamic law provides for a comprehensive system of support for a woman and her property entitlement, so much so that restrictions are placed on a woman's father in the matter of testamentary transfers of property. An Uniform Civil Code would, almost certainly, destroy the rights that a woman has, under the Islamic law of inheritance, to claim a portion of her father's property. So also would it destroy the right to claim *mehr*, carefully preserved despite the Anti-Dowry legislation.

An Uniform Civil Code cannot be drafted without considerable thought to social reality and the possibility of a major force which can succeed in sweeping aside religious sentiments of the kind which have ensured the ban on cow slaughter. After all, a fundamental decision about the Uniform Civil Code must, perforce, require a basic choice of values. Value neutral systems

are still unheard of in our lives. We are such a polarised society that a consensus on values as 'Indian values' is highly unlikely. And, in any case, such a consequence is more likely than not to be infected with spurious value judgments which we profess to be determined to annihilate.

Where the Supreme Court and Arif Mohammad Khan both went wrong was their inability to articulate the issue of divorce and maintenance in the perspective of the Islamic distinction between blood relations and marriage as a sacred contract. The issue of who will maintain a divorced wife unable to look after herself cannot be considered in a vacuum without an appropriate understanding of the Islamic milieu and the background of the law of inheritance. It is not just a fiction of *Shariat* that upon divorce a man and woman are strangers. This is, in fact, what happens in our society and is recognised by all laws. A girl never speaks of an ex-father or ex-brother. But she does speak of an ex-husband. The case is not that *Shariat* fails to provide for a woman. The case is that it provides differently and perhaps more comprehensively than Section 125. Besides, it should be noted that the *nikkahnamah* is an adequate vehicle for imposing appropriate conditions on a marriage, including the amount of dower which could well be calculated in terms of the value of maintenance in case of a divorce, and the right even of the bride, the wife, to claim dissolution of the marriage upon any particular condition. It would only be fair that all possibilities of Islamic law are first explored before judgment is passed on its relevance to modern society. This, unfortunately, was not done. Besides that, the failure to anticipate the feelings of the Muslim community itself points to a basic question about the right claimed by the Supreme Court to interpret *Shariat*. The restrictions imposed by the Court upon itself in *Mathura Ahir*'s case were forgotten. The clear line between interpretation and judicial legislation was obliterated.

Arif Mohammad Khan found the Supreme Court decision acceptable despite having admitted, as stated above, that the availability of support from parents, and brothers is a relevant consideration. He seemed to suggest that a woman is indigent if her "parents are dead, she does not have a brother or else he is not willing to support her." But that is certainly a far cry

from the Supreme Court judgment and quite remote from the result desired by people who applauded Arif Mohammad Khan's speech. Is it that the Minister was unable to reconcile disparate opinions in the hurry to address Parliament?

Like the Supreme Court, the Minister relied upon *Ayat* 241 as translated by Yusuf Ali:

> For divorced women maintenance (should be provided) on a reasonable (scale). This is the duty on the righteous.

This is the only translation where *mata* is translated as maintenance. However, Arif Khan failed to address himself to *Sura* 65 and *Ayat* 6 which states:

> Let the women live in *iddat* in the same style as ye live according to your means; annoy them not, so as to restrict them.

This has been interpreted over the ages to be the operative provision for maintenance so far as it is incumbent upon the husband. Certainly beyond the period of *iddat* the woman can expect to be looked after by those bound to her in blood or, as the *Quran* says by the 'righteous'.

It can be argued that 'righteous' includes the husband. If, at all, justification was to be found for imposing further maintenance on the husband under Section 125, it could simply be explained along the following lines: Just as by Islamic law *zakat* is incumbent upon every believer as regular charity, yet the paying of income-tax to the State has never been considered as prohibited or in conflict with *Shariat*, in the same manner maintenance beyond *iddat* can be said to have no conflict with *Shariat* law. Furthermore, maintenance from the husband beyond *iddat* is simply not provided for but there is no express prohibition either. But, of course, these are possibilities to be put to the *ulema* to consider by way of *ijtehad*. There is no such thing as a personal *ijtehad* because, as ordinary souls, we do not have the ability to undertake such an exercise. That does not mean that we become passive either. The asking of questions is just as important in *ijtehad* as the finding of answers. It is a

question of which role a person is ideally equipped to fulfil. The question is also of the basic approach of whether one wants to understand Islam or undermine it.

Beyond the confines of the specific position on merits, the controversy of the rights of Muslims under Islamic law or otherwise, and women are no exception, calls for serious thought about the nature of leadership that the Muslims deserve and desire. Undoubtedly, Islam has never encouraged the role of a politicized priestly class as an intermediary between the common man and the ruler. The role of spiritual and religious leaders has always been discreet and more relevant to personal life. It would hardly be a sensible proposition to conceive of a leader who was a complete captive to the whims and preferences of every single Muslim, irrespective of his learning and understanding. But, surely, Muslim leadership has to be responsive to the apprehensions and concerns of their community, especially in matters of such sensitive nature as the role of religion? At the same time, in realistic terms, Muslim leaders have to acquire the strength of purpose and strategy which can knock exploitation out of religion.

Inability to counter irreverent and irresponsible attacks on Islam and the Muslim way of life will render Muslim leadership redundant, leaving the field entirely to conservative priests. Muslim leaders also have to appreciate that the 'Muslim way of life' is just as much in need of protection as the fine interpretations of *Shariat*. Mr Ansari, in a speech at the Hamdard Nagar, drew an interesting contrast between the widely expressed desire to preserve endangered species of plants and animals and the scant sympathy shown for a need to preserve a social system considered good by an overwhelming majority of 11 per cent of India's population. On the other hand, Arif Mohammad Khan, speaking to *India Today* said:

> I do not know what you mean by long-term Muslim grievances. These are problems of the whole Indian society and there can be no redressal of the Muslims' grievances in isolation with the problems of the rest of the country. One peculiar problem of the Muslims is that a large percentage of them are craftsmen or artisans whose economic condition is getting poorer.

If Muslim leadership had a better record in providing for the impoverished majority of Muslims, or even in expressing their feelings, their words might have carried more weight.

Economic confidence, not sterile logic or false analogies, is the expectation of Muslims from their leaders. Arif Mohammad Khan relies extensively on the Law Commission of Pakistan to buttress his arguments. Notwithstanding the fact that the Law Commission report is probably no longer acceptable in Pakistan, it has to be said that it is somewhat surprising that the example of Pakistan should be considered relevant to the condition of Indian Muslims. Mr Ansari did not mince words in categorically repudiating Pakistani authorities and proudly upholding what he called India's unmatched accomplishment on the Islamic ethos.

Ultimately, it is not a question of reform versus *status quo*. It is a question of who has the right to interpret Islamic law and who has the right to reform it. Ultimately, the authority must lie within the community and not within ministerial chambers. Time and time again the same mistake has been made—whether it is with reference to the status of the Urdu language or the Constitution of the Aligarh Muslim University—the baby is dispatched with the bath water. It is also relevant, and indeed important, to understand that a captive audience in Parliament, is not the answer to carrying the message to a community intensely suspicious of any move to reform its personal law. Intimate contact with the community is the only answer for creating the atmosphere in which it would become possible to discuss the possibility of reform through codification. Till then, hasty pronouncements will only increase the burden of a very timorous Muslim leadership to keep together a restless flock to which alternative models of political assertion are now so patently available.

The Muslim community today is subject to the gravitational pulls of two extremes: the conservative religious leaders on the one hand—those intent upon securing complete subservience through rigid application of their view of the *Shariat*—and the somewhat idealistic left wing intellectuals on the other—those completely alienated from the sentiments of the Muslim masses but generously equipped to confuse the role of midstream

liberals. Pronouncements, such as those of the Supreme Court in *Shah Bano's* case and Arif Mohammad Khan's one hundred minutes in Parliament, will not succeed in undermining the hold of the priests but will certainly destoy all possibility of the liberal Muslim emerging as a stable leader. It will also retard our efforts to understand *Shariat*.

Chapter Eleven

UNCOMMON CAUSE: UNIFORM CIVIL CODE

The *Shah Bano* debate has gradually evolved into a confrontation well beyond the immediate concern for providing security for an old woman. The approach of the vocal elements of the majority community as well as a small section of Muslims labelled 'intellectuals' or 'progressives' is not only curious but also alarming.

Essentially four issues have surfaced out of the controversy that *Shah Bano* stirred:

1. Whether a destitute woman has legal relief from poverty irrespective of her religion?
2. Whether Islamic law is in need of reform on the issue of matrimonial provisions in particular and other provisions in general?
3. Whether the courts have a right to interpret Islamic law and reform it where they consider necessary?
4. Whether the claim for an Uniform Civil Code is justified?

Discussion on *Shah Bano* has more often than not remained a confused amalgam of the four questions. To add to this confusion is the readiness of either side in the controversy to jump to conclusions such as 'communal response', 'over sensitiveness' and 'bigotry'. Though the supporters of *Shah Bano* can rightly claim to be speaking on the basis of a natural consensus amongst themselves, their antagonists suffer from not having a representative spokesman. The terrifying, if not nauseating feature is the promptness with which a Muslim speaker is confronted with: "How can you, as a modern person, believe in such archaic rubbish?" Yet another response is like throwing shadow punches: "If the courts can interpret Parsi and Hindu scripture and holy texts, why not the *Quran*?" Of course, what takes the cake is the oft-expressed belief that the Muslim reac-

tion is another facet of the worldwide growth of 'fundamentalism' and, therefore, deserving of contempt and immediate extermination. Ironically, persons who make disparaging remarks about the new leaders of the Muslim world cannot resist the obverse perversity of relying upon the logic of Pan-Islamism: "Why not look at what Cairo and Karachi have done?" they volunteer.

These are very distressing arguments in a plural society. Ultimately, the question does not have to address itself to whether Muslims are right in responding in the manner in which they have. The relevent question is whether Muslims have a right to respond.

'Fundamentalism' and its companion, 'extremism' are terms very loosely used against persons whose views differ from ours; sometimes the disagreement being expressed very forcefully. But that in itself cannot be a justifiable ground for condemning a person's *bona fides*. In essence a fundamentalist is a person who does not distinguish between faith and reason. Of course given the state of human knowledge, there is no such thing as complete reason and, perforce, faith provides the nucleus of any thought structure, even that of an aesthetic or a Marxist. Many arguments pitched against *Shariat* are all arguments of reason. For instance, the somewhat hypnotic mouthing of phrases from the Constituent Assembly debates regarding Uniform Civil Code as being "good" or "persuasive" reasons for imposing such a Code is an instance in point. We will return to that later.

To take up the questions serially: the first must be answered in the affirmative. A woman *does* and *must* have a right to be protected against indignity of poverty and destitution. More so a Muslim woman for, despite the commonly held notion amongst non-Muslims that Muslim women are treated as inferior to men, nothing in the history of Islamic civilization and the actual law bears that out. Islam is a revealed religion but it was not revealed as a preconceived whole. It was revealed in instalments in response to actual situations. The central focus of the Islamic revolution, which was a powerful intellectual, political and socio-economic reform movement, was the life of Hazrat Mohammad. His way of life, *Sunnat*, became the way of life for the followers of Islam, and the Prophet's own life is a

brilliant example of the respect and consideration shown to women. There never has been a serious problem in Islam about the security of divorced and widowed women. Indeed, 1400 years ago Islam was consciously designed to provide for women whilst other civilizations continued to treat them as chattel. Protection was provided by securing entitlements in paternal property as well as claims against the estate of a dead husband. Other male relatives were enjoined to provide succour where all else failed. Finally, of course, there were the state institutions. There is bound to be a difference in a state which does not profess Islam as the official religion and where state institutions do not necessarily reflect the infrastructure of an Islamic state. In other words, state institutions have to be substituted by public charities. This may not have been developed sufficiently in the Muslim community of India. In fact it is common knowledge that the devastation wrought by the prevailing system of *Waqf* Boards and Custodian of Evacuee Property are a scandal of immeasurable proportions. The issue of providing maintenance to a Muslim divorcee concerns Muslims and they will willingly come forward with honest solutions. But they will not have an ill-tutored, ignorant view of Islamic law dictate to them to act on the wishes of others. Even conventional interpretations and applications of the *Quran* provide in most cases remedies and reliefs which are considered very modern in contemporary systems. Divorce by mutual consent is an innovation in common law. Islam has always had it.

On the second question of reform, some eminent non-Muslims have rushed to make sweeping statements on the line to be drawn between religion and social practice. Of course the line can be, and if the need arises must be, drawn. But the standard will have to accommodate the basic tenets of faith in Islam. On several occasions men as distinguished as former Supreme Court Judge, D.A. Desai, a member of the *Shah Bano* bench, have publically spoken of marriage, succession, etc. as not being 'religious'. This is unlikely to be accepted by Muslims. The *Quran* cannot be segmented into religion and practice. Anyone who reads the *Quran* with the slightest degree of comprehension knows this. Furthermore there are essential features of the way of life recommended by Islam which rest upon the entire struc-

ture of the *Quran*. Social engineering has no place there.

Yet there are immense possibilities for reform and development. An attempt at conciliation is necessary before pronouncing irrevocable divorce (*talaq*). In some Islamic countries divorce proceedings have been institutionalised to include special conciliation hearings before a *Shariat* court. But the exercise of reform by *ijtehad* can be performed by a select few, learned in the subtle philosophy of Islam, the text of *Shariat* and recipients of general respect from Muslims. It is unfair to imagine that the *Ulema* (the learned) of today are ignorant of scientific and social progress and the inevitable light that it sheds on historical interpretations. Like good and bad judges, *Ulema* too have variety.

On the third question, a bogey has been raised that Muslims do not accept the authority of the highest court of the land to interpret the *Quran*. One commentator went to the extent of suggesting that there was no objection raised to the Supreme Court interpreting requirements of Islam in the famous 'cow slaughter' case (*Mohammad Hanif Qureshi* v *State of Bihar*) but it is being done now due to the arrival, in our midst, of the ugly views of 'fundamentalism' Three points must be said in response:

1. The court's right to interpret and apply *Shariat* has not been seriously questioned in important Muslim forums. There may have been some cries of overstatement which are commonplace in every agitation. We know that the court applies Christian, Hindu, Parsi and every law. So it must apply Islam.

2. The 'cow slaughter' case is a terrible analogy because the context there was very different. It was not established that *Qurbani* of bovine creatures was imperative and that other animals like goats and sheep would not suffice. Furthermore, it was a conscious decision on the part of the Muslims not to pursue a claim which had very important sentimental ramifications for Hindus. It did not affect the way of life of an Indian Muslim to eat buffalo meat instead of beef. And it mattered so much to a Hindu that cows be left inviolate. This gesture of goodwill and coexistence should not be interpreted as acceptance of a *fait accompli* on the right to practice religion.

3. In the past the court has interpreted the *Quran* with the guidance of accepted authorities and learned commentators. But as all common lawyers know, and especially the prevailing school of jurisprudence in India is aware, Indian judges, like some of their contemporaries elsewhere, have claimed a right to "make law, not just apply it". This is an extremely difficult field of jurisprudence in which two of the world's greatest jurists, H.L.A. Hart (from Oxford University) and Ronald Dworkin (from Harvard and Oxford) have pitched into an epic intellectual battle. For the present it would suffice to say that even if judges make law, they cannot possibly do so to the same extent and in the same manner as legislators, else all element of democratic accountability would be given the go by. This is all that Muslims found fault with in former Chief Justice Chandrachud's freewheeling judicial discourse on the merits of Islamic law and his virtual attempt to bring in an Uniform Civil Code.

Finally, the question which seems foreclosed in official policy but which remains alive in every forum—the justification for an Uniform Civil Code. Proponents of the Code are so firmly convinced of the intellectual respectability of their charge that they have not even endeavoured to find arguments in its support. It is here that their faith comes in. And so you have claims like: 'A Code is imperative to modernise India' and "It is imperative for our unity". If pressed any further they retreat to the wisdom of the Founding Fathers as though that, in itself, is sufficient. But exactly what did the Constituent Assembly consider by way of arguments in support of the Code? C.M. Munshi's strongest argument was surprisingly relativist:

> Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a civil code. No minority in these countries is permitted to have such rights.

He then proceeded to speak of the concept of unity through uniformity:

> There are many factors—and important factors—which still offer serious dangers to our national consolidation and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible we may be able to say: "Well, we are not merely a nation because we say so but also in effect, by the way we live; by our personal law, we are a strong consolidated nation".

Alladi Krishnaswami Ayyar's approach was no more subtle:

> We want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation or is this country to be kept up always as a series of competing communities?

B.R. Ambedkar drew inspiration from the *fait accompli* argument:

> The only province the civil law has not been able to invade so far is marriage and succession and it is the intention of those who desire to have Article 35 as part of the Constitution to bring about that change. It is, therefore, too late now to ask the question whether we could do it. As I say, we have already done it.

Unhappily these are not arguments of great persuasion. There seems too eager an acceptance of a direct equation between unity and uniformity. Hindsight will now show that unity is more directly dependent on a host of other considerations which we may have sadly neglected in our glib acceptance of the uniformity thesis. Furthermore, pluralism in law and social behaviour seem to have completely escaped the imagination of our respected Founding Fathers in their pursuit for neat and comprehensive models of governance. Pluralism is now threatening such stable societies as the UK and the USA. Modern sociological studies are directed towards comprehending the trust of pluralism and providing appropriate accommodation for it. In the UK, especially, race relations legislation has always

run into the difficulty of inconsistent, if not incompatible, cultural relations. Then how can we in India, an amazing conglomerate of diverse shades of behaviour, seriously contemplate uniformity?

Ultimately, of course, Muslims are not the only minority to be affected. We do not even perceive the immense field of tribal culture which will be totally destroyed if there is no pluralism in our system to allow for its existence.

Besides, these obvious flaws in the uniformity thesis, there is another aspect which calls for deeper scrutiny. Uniformity as a way of life is to be found in two entirely opposing systems of government—dictatorship of the proletariat on the one hand and an advanced state of conventional capitalism. In the first case it is part of a discipline without which the state is unable to keep pace with the demands of a society which is determined to stamp out self-centred notions of development. In the other case it is simply a product of efficiency in the market. But the danger in either case is to transgress the thin line which separates behavioural uniformity with intellectual uniformity.

Despite the fact that the Uniform Civil Code is envisaged in the Directive Principles of State Policy, its rejection is unavoidable if India is to adhere to the competing belief in value of multidimensional personality of its citizens.

Finally, the argument about similar claims not having been recognised in Muslim countries is spurious. The character, status and historical context of Indian Muslims does not find a parallel anywhere in the annals of world history. Their is an unique predicament, both sad and fascinating. Simple analogies are unlikely to be beneficial to their condition or to their considerable efforts to adjust to a reality not of their making. A comment which may not be out of place about the Constituent Assembly debates is that the participants did not betray the slightest impression that they knew how intensely Muslims feel about the threat of an Uniform Civil Code.

Then again, it is hardly right to advocate an Uniform Civil Code without elucidating its likely philosophy and contents. For instance, how much would it cover and what exceptions would be permitted for birth and death ceremonies? What would happen to a Muslim woman's potentially powerful right to *mehr*

or alimony? What would happen to the right to a share of a father's property accruing to every woman, including married women, upon the death of the father? Certainly the right to marry four wives would be exorcised. But does that stop pre-material and extra-material involvements? After all, an Uniform Civil Code for the twenty-first century cannot purport to legislate morality long after the common law world has accepted that much of morality is not the concern of the state. Presumably it is at least equally reprehensible to have four lovers as it is to have four wives. And with lovers and the modern sexual ethos come wife swaps, homosexuality, lesbianism, unwed mothers, even surrogate sex companions and parents. These are not entirely remote improbables for Indian society. There are parts of India where, in matters of sexual promiscuity, Indian society is at no great disadvantage vis-a-vis the 'neighbour's wife' ethos of America. In any case, an Uniform Civil Code cannot shy away from these matters. It is certainly difficult to imagine the BJP National Executive and Promila Dandavate, an eminent social worker, who advocate enactment of the Code, addressing themselves to these aspects of modern life.

There are also some arguments which surfaced during the Supreme Court hearing and for which Justice Desai is to be thanked for reminding us in his post-judicial career. Speaking at a Law Institute seminar, the former judge repeated the question he asked from the Bench: "What does a 74-year-old woman do if her husband leaves her? She has the choice to marry or become a prostitute. And at her age both are virtually impossible!" That is really too simplistic. After all, does the death of the husband put the widow in this unwholesome dilemma? Justice Desai was told that there was sufficient scope in the *nikkanamah* (marriage contract) to provide for adequate *mehr*, prohibition on multiple marriages, special conditions for divorce including a right to the wife to claim divorce (*khula*). "Who has the guts to demand the inclusion of such terms? In fact the *nikkahnamah* is a blatantly one-sided contract and therefore violative of public policy," was the judge's reply. But then, how many women have the guts to come to the Supreme Court? Besides, it has never been the practice of the court to strike down a power simply because there is a possibility of its abuse.

Speaking of pragmatism and sociological approach to the problem of social justice, *Shah Bano* threw up some glaring inadequacies in our analysis. Whilst resting the guns of reform on the frail shoulders of a 74-year-old woman from Indore, no reformist considered it necessary to enquire from Shah Bano if she could envisaged a world without the rituals and conventions of north Indian Muslim culture. Her husband may have left her but she had certainly not lost the comforting solace of a joint family. She was, after all, in the protection of her son and his wife and not left to the depressing confines of an old age home. If Shah Bano had to decide upon the wedding of her grandchildren, would she subscribe to the *nikkah*, thought of so ill by Justice Desai, or a civil ceremony in a Registrar's court? Shah Bano, for one reason or another, wanted maintenance, but her whole life is a picture of the average Muslim woman. Most of this picture she would not allow anyone to rearrange according to an alien social philosophy. In this context it is also important to highlight the existing provisions of law which give Muslims as well as others an option to regulate their affairs by 'non-religious' provisions. Under the Special Marriages Act, a Muslim couple married by its authority or who have a *nikkah* and then register the marriage under the Act, are governed by the Indian Succession Act instead of *Shariat*. Not many Muslims opt for this.

Again, language, normally the vehicle for communication, can sometimes become a barrier. Researchers from Gujarat who spoke to Shah Bano about her predicament brought back alarming accounts of her condition. "I am dying. Why don't I die?" she is reported to have said in response to a question about how she felt. "Who lets me go out?" was her rhetorical response to a suggestion that she should get out of her home and enjoy herself a bit. The picture was painted so gloomy that, at one seminar in New Delhi, a lawyer suggested that an *Habeas Corpus* petition be filed against Shah Bano's son. Another person suggested that the Prime Minister should be asked to have a Delhi Development Authority (DDA) flat allotted to her where she would be looked after by her well wishers and the supporters of the Uniform Civil Code!

Now, one has to have lived amongst north Indian Muslims to

understand the nuances of cynicism and wry humour which give their language the flavour it is renowned for. My own grandmother, a happy commanding lady a little older than Shah Bano, would provide equally striking copy for a credulous stranger.

Shah Bano may have reneged from her position on maintenance because she sincerely does not repudiate her community and its norms, but for those to whom she had become a champion the disappointment is unacceptable. It may be somewhat harsh but the fact is that many of the Muslim women who spearheaded the "From Shah Bano to Sweeping Change" movement would not have much to say to persons like Shah Bano and the latter, in return, would have precious little to be excited about in them. Noble as their enterprise may have been, it is unfortunate that an unwitting Shah Bano should become the guinea pig for a social reform movement they wish to launch from the apronstrings of the government.

There is a curious confusion of cross currents on *Shah Bano* and the Uniform Civil Code. The Union Minister of State for Law, Hans Raj Bhardwaj, has expressed publically, in and outside Parliament, conflicting views on the case. To begin with, he said the Supreme Court judgment was final, giving the impression that he was endorsing it. Then came a statement that customary law cannot be allowed to perpetuate the oppression of women. Finally came his vociferous refutation of the Supreme Court's suggestion that an Uniform Civil Code was imperative. But even there the thrust was against the Supreme Court purporting to advise the government on the business of governance and not as a matter of high state principles.

Ram Jethmalani and L.K. Advani, as well as the BJP National Executive, have been at pains to lament Shah Bano's lack of courage. They resort to desparate arguments of nationalism to convince ordinary people about the moral necessity of a Code. On the other hand, the traditional support for the Code has, for some reason, given way. Balasaheb Deoras, the head of the RSS, has gone on record to state that the Muslims could keep their own personal law so long as they prove allegiance to *Bharat Mata*. The Association of Women Lawyers, addressed by the Chief Justice of India, P.N. Bhagwati, purported and persumably

felt fortified in the exhortations of Ms Justice Sunanda Bhandare who described *Shah Bano* as a major victory for women's liberation.

But the uniformists do not speak with a coherent and compatible voice. Nandita Haksar, a leading advocate of women's rights and a tireless social reformer who one would have expected to join hands with Freny Ponda and company, has expressed serious doubts about the basis of claims and counter claims being made. In her opinion, Visva Hindu Parishad and other Hindu organisations are obviously supporting the claim for a Code in the hope that the Hindu Code will prevail. Certain women's groups are supporting the claim in the belief that religion and its institutions are the perpetrators of sexual inequality. For Nandita Haksar unless a radical social change is the basis of a claim, one is not justified in dictating to a person who claims a right to live according to his or her religion.

Secular ideology or Hindu chauvinism, it is all secondary to one simple query: Have any of these people been perturbed about so many other inequities suffered by Muslims? Do they know that there is much of such suffering? For them *Shariat* has become a convenient plaything which can be knocked about to establish high credentials of their groups. They might all claim to be working towards the same objective but their basic premises are so divergent that it would be unwise to club them all together as part of a reform movement.

The most frightening statement of reaction came from a very respected social worker, Vasudha Dhagamwar. Surprisingly, *The Times of India*, which had consistently refused to be drawn into the *Shah Bano* controversy on the basis of a considered policy to keep clear of 'Muslim problems', suddenly made an exception to publish "After the Shah Bano Judgment" by Ms Dhagamwar, a two-part article expressing the displeasure that "a handful of reactionary persons, claiming to speak on behalf of a minority of 11 per cent managed to thwart the will of the remaining 89 per cent, a situation for which the government of India is as much, perhaps more, to blame."

Vasudha Dhagamwar has been an activist long enough to be able to argue a cause dramatically. But her sociological expertise notwithstanding, she bases her beliefs about the true feelings of

Muslim women by the reactions of Aneesa Begum who works for her parents. Ms Dhagamwar might indeed have done her case some good by telling us what made her think that "it is an open secret that the Muslim fundamentalists have pressurised Shah Bano." Does that explain Shah Bano's self assured television appearances, letters to Muslim Ministers (except Arif Mohammad Khan), requests for medical assistance and even the expression of a desire to join politics as a Congress MLA? But that is only the beginning. The arguments which follow put Deoras to shame. According to Ms Dhagamwar, the Muslim case is based on several 'spurious' arguments:

1. That national leaders had promised non-interference in Personal Law at the time of Partition. To this she responds by saying that the Muslim community includes Muslim women and they are demanding change by going to court. It is surprising that Ms Dhagamwar should believe that Shah Bano could not possibly be expected to know Article 44 of the Directive Principles, yet Muslim women who go to court for maintenance are quite knowledgeable about *Shariat*;
2. That it will make the minorities feel insecure. Here Ms Dhagamwar equates minorities with the policeman of Bhagalpur blindings and carpet manufacturers and brick kiln owners who violate labour laws. She does not obviously want to know that the 'insecurity' is not at the grant of maintenance by Chief Justice Chandrachud since Justice Krishna Iyer had already granted maintenance in earlier cases, but the reasoning adopted by the Court which vilified *Shariat*;
3. That Islam has provided for maintenance beyond *iddat*. The woman's blood relative must take care of her. Failing them, the state must provide for her. Ms Dhagamwar's reaction to this is a complete non sequiter:

This argument predictably brings forth very sharp retorts about the nature of the Indian state which is secular, rather than theocratic, leave alone Islamic. In the meanwhile something basic is forgotten! The state in India *has* provided for the destitute divorcee. That is precisely what Section 125 of the Criminal Procedure Code is about.

In the second part of her article, Ms Dhagamwar takes up themes which indicate a dangerous level of illiberalism in our intellectuals. To begin with she says:

> Secularism is being interpreted as an ideology which supports the *status quo* in the minorities, however unfair and reactionary the *status quo* may be. The proof of secularism of Hindus that is demanded by many Muslim leaders makes one feel sometimes that nothing short of abjuration of Hindu religion by its followers will satisfy them. And Hinduism is seen everywhere—in names, in greetings, in the language used and in the laws that prevail. Anything perceived as un-Islamic is regarded not as secular but Hindu. Alas, how can 85 per cent of the population be wished away? And why should it be?

The majority paranoia has finally found utterance. Ms Dhagamwar cannot make up her mind as to who wants to interfere in whose way of life, rightly or wrongly. She has a thesis about Muslims and their oppressive ways and she expects governmental aid in implementing her thesis. Yet she feels threatened.

One might have expected an intellectual of Ms Dhagamwar's calibre not to wade in the ambivalent waters of the concept of national mainstream. Says she: "Congress party has secured Muslim votes by pushing the Muslims out of the mainstream, by reducing them to bring nothing but Muslims." Now what else could they be? And isn't a participation in the Congress movement about as mainstream as one can swim?

Finally, there is the inevitable theme of despair—appeasement. The Nellie massacre is put down as a long term result of the late Mr Fakhruddin Ali Ahmed's strategy to import Muslim vote banks, and the government's shortsighted capitalizing on that resource. Even if Nellie could be explained as a clash of two minorities, Ms Dhagamwar would at least be aware of other killings by non-tribals, even para military forces. The likes of Hitler haunt Ms Dhagamwar on the issue of appeasement. But a closer reading of history will tell her that Hitler did not represent a minority. And that there is a vast difference between a person intending to control the world and the

person who seeks but to survive as a free person. Muslims oppose the Code not to oppress their women but to be free to follow their own way of life. Ms Dhagamwar's paternalism for the Muslim community in general, without any evidence of serious attempts to understand the Muslim psyche and situation, can, at best, be described as a dangerous combination. It certainly does not have any acceptable arguments for maintenance vide *Shah Bano* and the Uniform Civil Code.

Chapter Twelve

SECULAR STATESMANSHIP: THE PRIME MINISTER LENDS A HAND

Curiously, Mr Rajiv Gandhi became India's Prime Minister and indeed completed four hundred days in office without the issue of minorities claiming a priority position on his agenda. The Sikh problem, though quite tricky and technically a minority problem, never did pose itself as such and neither was it treated on that level. Whilst the new Prime Minister set out to invigorate Indian industry, public administration and his own party, not to mention international relations, and new policies began to take shape in finance, education, taxation, foreign investment, electronics, etc., the issue of minorities slipped by default into the obscurity of manifesto cliches. The ballot avalanche of 1984 swept away the sour mangoes of Malihabad and, for once, there was respite from the worry of Muslims voting for Congress or abstaining. In fact, it was clear soon after the results came in that Muslims, especially the women, had given determined support to the young Prime Minister.

Barely two years before her death, Mrs Indira Gandhi had reacted sharply and rapidly to an attempt by Syed Shahabuddin, Janata party MP, to gather an all party delegation of Muslim MPs to present a memorandum of Muslim claims and expectations. Though her own party leader, Dr Rafiq Zakaria, eventually read out the memorandum, Mrs Gandhi later coaxed Muslim MPs of the Congress to present their own character of demands, which was immediately accommodated in an official directive. At that time, Congress leaders felt a sudden snapping of communication with Muslim workers, resulting in outspoken criticism from grassroot leaders like Manzoor Ahmed, MLA from Meerut and the inexplicable shock defeat of Congress by Menaka Gandhi's candidate from Malihabad. But both the malady and the medicine were soon lost in the gunfire of Punjab which built up to the crescendo of Operation Bluestar.

Mrs Gandhi, like her father, had enjoyed a special relationship with Muslims. But despite that the strains had become quite evident by 1983.

Towards the end of 1985 three things happened which transformed the minority issue into a critical item. First, Arif Mohammad Khan spoke in Parliament defending the Supreme Court decision of *Shah Bano* in August 1985. This was spontaneously proclaimed in public circles as a brilliant performance of the voice of reason and modernism amongst Muslims. The Minister was feted and applauded by activist groups advocating widespread reform of 'Islamic' law and demanding legislation for an Uniform Civil Code. A few weeks later came a virtual tidal wave of protest from Calcutta, Patna, Bombay, Delhi, Kanpur and Hyderabad. Arif Mohammad Khan was mobbed and mocked in Kanpur, home constituency for him till he shifted to Bahraich. Police had to resort to firing in Patna. Meanwhile, Shah Bano denounced the Supreme Court judgment as violative of *Shariat*. Second the minorities in Assam, a substantial number of whom were Muslims, forged a political alliance, the United Minority Front (UMF), with the blessings of Maulana Asad Madani,Congress party leader,whose dwindling support inUP and Bihar has been set off by a growing influence in Assam. For Asad Madani to wear two caps was inevitable. But whether UMF was equally inevitable was doubtful. With the formation of UMF there was hardly anything left for the Congress to do in Assam. Once again the Punjab finale was orchestrated. A spiritless fight in which the magic wand of 1984 failed in public. But the minorities' sharp message travelled to Delhi even before the AICC(I) observers flew back. Third, if the cake had soured in Assam, the cherry on it tasted worse in Kishanganj, Bihar. Syed Shahabuddin won on the *Shah Bano* ticket without even having to utter a word about it during his campaign. If there was ever any doubt about his views for the ordinary Muslim, *Doordarshan* took the message to every little street and home of Bihar and UP. Well-known journalist, M.J. Akbar, who has, in the past, been equally enthusiastic in his columns about Shahabuddin and Arif Mohammad Khan, put the two of them face to face in his *Newsline* programme on *Doordarshan*. Laborious endeavours by the editor and Arif Mohammad Khan to

highlight the valditity of the position taken by Khan were demolished by Shahabuddin in one fell stroke. "What if Islamic law is unfair to women? Would you still support it?" asked Akbar. "Nothing about Islam is unfair to women," came Shahabuddin's pat reply. "*Touche*", added the voter.

Prime Minister Rajiv Gandhi's Muslim Ministers and MPs were sharply divided on the *Shah Bano* issue. That and the self-consciousness of being watched by a very critical audience prevented any meaningful dialogue. Zia-ur-Rehman Ansari,in a matter-of-fact unambiguous refutation in the Rajya Sabha of the position defended his junior colleague, clearly signalled that Arif Khan could not have spoken for the government. The bubble had burst and opinions began to flow. Then the Prime Minister took the initiative.

Many delegations called upon the Prime Minister regarding *Shah Bano*. The lady herself wrote to him for assistance. But the meeting he had with two groups—one led by Suliaman Sait and Maulana Ali Mian of Lucknow and the other comprising largely, though not exclusively, of Muslim women pressing for reform. The former group included important *maulavis* of north India, members of the Muslim Personal Law Board, three lawyers including the author and Prof Tahir Mehmood and MPs Banatwala and Sait of the Muslim League, Aziz Sait, Abida Ahmed and Najma Heptullah of the Congress and Syed Shahabuddin of the Janata.

Just before the Prime Minister entered the conference room, Shahabuddin had the seating rearranged so as to be in direct eye contact with him. Being an articulate and persevering person, Shahabuddin was able to address Rajiv Gandhi with self assurance and clarity, somewhat to the chagrin of Aziz Sait who had earlier chided the *maulavis* for dancing to the Janata man's tune. The Prime Minister opened with an unexceptional and unambiguous statement: "We do not intend to interfere with Muslim Personal Law. In any case, if any change has to be brought about, it should not be inadvertent." Mr Gandhi then enquired as to what could be said to satisfy people who demanded justice for an unprovided woman. The delegation had a comprehensive reply. "The point is whether one wants to provide for the woman or punish the man! If it is the former

then we suggest that the Criminal Procedure Code (CrPC) be amended thus—the magistrate can order immediate payment of *mehr* (dower) due; maintenance for children; maintenance during the period of *iddat* (normally three months); delivery of all the women's property; and order maintenance against male relatives including sons, father, brother, uncle, nephews, etc. as per *Shariat*." It was even suggested that the limit be raised beyond Rs 500. The Prime Minister found this argument persuasive and even quipped about Hindu women demanding the same protection. "But what if there are no relatives?" he asked, obviously wanting to explore the remotest possibility. It was suggested that a Muslim institution, like the *Waqf* Board, could be made the ultimate source of maintenance. The Prime Minister thought that Muslims might themselves wish to codify their personal law and highlight the rights given by *Shariat* by such devices as a standard *nikkahnamah*. There was discussion on other points like the possibility of ensuring appropriate quantum of *mehr*. The Prime Minister acted swiftly. Within a couple of hours the two Law Ministers had reconvened the group at Najma Heptullah's residence and indicated their enthusiastic acceptance of the draft proposals. Only the details of *Waqf* Board involvement had to be worked out. Curiously, at this meeting Shahabuddin had been excluded and young Congress MPs Irshad and Ahmed Patel were invited to join.

The upshot of the entire episode was that a young Prime Minister with barely three years of political experience and virtually no experience of minority politics, easily placed his finger on the pulse and gave to the representatives of the Muslim community what his Ministers and MPs were totally foxed about. He spoke directly, without intermediaries. In the span of a few hours he created a special channel of communication. At the same time he had his eyes firmly on the balance. He constantly repeated: "We must be able to carry the other groups with us."

The exercise, apart from uncovering the intricate field of Islamic jurisprudence to the Prime Minister, must have made one home truth evident—that Muslim leadership is caged in an unhappy dilemma and that what it might do to please the majority may well be uprooting its own timid roots in the community.

Reports of his meeting with the women's group have it that the Prime Minister was sympathetic but expressed his inability to intervene unless Muslims as a whole rose for reform. The first meeting was somewhat chaotic, and the second one, though more organised, got bogged down on the issue of support by male relatives. Mrs Margaret Alva, Minister of State for Sports and Women's Affairs, who was especially asked to be present, is reported to have objected to the acceptance of such a scheme. "What of other women?" she reportedly asked. What indeed? one might ask.

Though no satisfactory conclusion seems to have been arrived at with the *Shariat* Bill, one particular aspect of this saga will leave a lasting impact on minority politics in the months to come. Understandably the Prime Minister prefers to talk directly to the protagonists of any political theatre, a style he established in Punjab and Assam. But there, at least, there were some local and national leaders who played their respective roles in the search of a solution. In *Shah Bano* Muslim leaders or legislators of the Congress party seem to have either kept themselves away from a sticky wicket or else have not found a place on the team. The Ministers who observed expedient silence and the Ministers who expressed themselves eloquently were equally remote from the negotiations. The field was held by opposition Muslim leaders and *maulavis*. Towards the end though, Z.A. Ansari seems to have had a brief look in. On the other hand, the women's group was packed with forceful, successful, upper middle class professionals whose daily contact with the average Muslim woman must be limited to domestic servants.

Shah Bano, despite the wide publicity and the restlessness, is a relatively minor matter and is likely to die down soon. But it has come pretty near the raw nerves of accumulated Muslim grievances. At the same time it seems to have pumped a lot of adrenalin into the veins of Muslim baiters. The phenomenon has come a long way from the crude attempts of Prof P.N. Oak and Prof Balraj Madhok. Now the attack is by an approach to reason and rationalism. Arun Shourie's three part series in *The Illustrated Weekly of India* (January 1986) is the torch bearer. The fire will spread. And if Muslims want to talk again, in fear or in anger, must they call Shahabuddin or Sulaiman Sait or Ali

Mian first? Must that be their communication with the State? Then again, is there a degree of permanence about the role of these distinguished persons? Najma Heptullah was able to provide a very constructive lead in the matter and that itself may have been the reason for shifting her to a party post in which she can be more effective in the months to come. But despite that, one cannot help feeling that the approach of senior Muslims of the Congress party remains segmented and uncoordinated. The unhappy turn of events at Faizabad and the consequent rising of tempers across the country will be a difficult test for the new arrangement.

The introduction of the Muslim Women (Protection of Rights on Divorce) Bill 1986 in the Lok Sabha will undoubtedly figure in the political biography of Prime Minister Rajiv Gandhi as an act of enormous courage, deep perception on Indian reality and unusual political sagacity. But for his timely initiative an unprecedented social stalemate and subsequent explosion may have been unavoidable over *Shah Bano*. It is now quite clear that many members of his party as well as the opposition (the Communists and BJP were one voice on this) were taken by surprise by not only the decision to reverse *Shah Bano* by legislation but also the determined speed with which the government acted. Almost without exception, reporters and editorial writers of major national dailies raised a cry of despair. "Bill will throw Muslim women to the wolves", wailed the *Sunday Observer* of Bombay. A staggering signature list of Muslim literati and eminence was sent to the Prime Minister in indignant protest at the 'retrograde step'. Amongst the hundred signatures obtained by the Committee for Protection of Rights of Muslim Women convened by Ms Zoya Hasan, were names that made the memorandum a virtual 'Who's Who' of Indian Muslims—K.A. Abbas (writer and film maker), Salim Ali, MP (ornithologist), Moonis Raza (Vice-Chancellor, Delhi University), Abid Husain (Member, Planning Commission), Dr Obaid Siddiqui (Professor, Tata Institute), Zahoor Qasim (Secretary, Govt. of India), M.A. Halim (Speaker, West Bengal Assembly), Col Bashiruddin Zaidi (former Vice-Chancellor, AMU), Mr Badruddin Tyabji (former Vice-Chancellor, AMU), Daniel Latifi (Senior Advocate), Saeed Mirza, Shabana Azmi, Javed Akhtar,

Muzaffar Ali, Shaukat Kaifi (all from the cinema industry), Prof Rasheedudin Khan, Prof Irfan Habib, Prof Bashiruddin Ahmed, Prof S. Agwani, Prof Maqbool Ahmed, Prof Mohibbul Hasan, Prof Mushirul Hasan, Prof Moin Shakir (all academicians), Sardar Jafri, E. Alkazi, Shaharyar, Amal Allana, Anees Jung, Faizal Alkazi, Saeed Naqvi, and Rashid Talib.

The intention of the memorandum was to refute the claim that all Muslims supported the Bill. But the Prime Minister could not be overawed. In fact a small delegation of the signatories who met the Prime Minister after the Bill was introduced came away with the impression that "he was meticulously prepared on the legal and social aspects. He was incredibly charming and disarming." In his meeting with the delegation, at the Congress Parliamentary Party meeting specially convened for the purpose and in his reply to the debate on the President's address, Rajiv Gandhi stood his ground and firmly declared that the Bill was designed to provide greater protection than Section 125 of CrPC. "I was against the Bill myself to begin with," he is reported to have remarked. "But a closer scrutiny convinced me to the contrary." On the floor of the House he declared unambiguously his resolve to preserve plurality as an aspect of secular democracy. Sulaiman Sait spoke for a multitude of Muslims when he acknowledged the Prime Minister's remarkable act of statesmanship and said: "My community is grateful to you, Prime Minister."

The Prime Minister's act of bold commitment to secularism quickly overwhelmed any opposition but may have left Arif Mohammad Khan somewhat out on a limb. It is far from clear that it was imperative for Arif to resign. It was not a showdown. It was not a *volte-face*. It was simply a mature assessment of popular beliefs and dispassionate application of accepted principles. "I have done my bit for a common code," said the Prime Minister. "I was married to Sonia in the Registrar's Court. Now you must do yours. Communicate with your community."

Rajiv Gandhi is described as a novice in politics. Yet he seems to understand it better than the hundred eminent Muslims who wanted him to stall the Bill. In just a little over an year in office as Prime Minister, Rajiv Gandhi has proved with an easy grace that he understands India.

The aftermath of the introduction of The Muslim Women (Protection of Rights on Divorce) Bill, 1986 brought forth hectic political activity both against and for the Bill. In an unprecedented front page assault in *The Times of India*, Arun Shourie wrote of the Arif Mohammad Khan Affair in terms of endearment and intimacy with whatever was going on in Arif's preplexed brain. Though Arif Khan emphatically denied having spoken to the press at the point in time, as though that was a greater political *faux pas* than betraying his own community, Arun Shourie unselfconsciously disclosed specific bits of information obviously gathered from Arif himself. Who else would have spoken about the advise Justice Khalid gave Arif or the concessions made by Professor Tahir Mehmood? Perhaps they did. But the case is closed by Shourie:

> He (Arif) is convinced that the Bill is bad on merits, and it goes against the tenets of Islam, that it will compound the grave injustice from which Muslim women already suffered. He has done a great deal of work on the question. As we talked on the law in my study, two volumes of the nine of Sahib Bukhari.... "Here, look at this," he said, "This is Volume 7, isn't it? Look at pages 199 and 200."

We know then who spoke to Shourie. But the adulation it inspired is amazing:

> Many Ministers are articulate, even I have met a few of them. But this is the first time that I met a Minister who can pick up the right volume of a theological text and at once turn to the right page.

Of course there may well have been other sources too. Arun Shourie quotes liberally from "confidential" notings on the files of the Ministry of Law. Mr B.S. Sekhon's brief note which was endorsed by the Law Ministers was a dry, technical repetition of the ratio of *Shah Bano*. There was no attempt to examine basic socio-legal issues or aspects of Islamic jurisprudence germane to the controversy. The note was simply a bureaucratic endorsement of the Supreme Court's conclusions and did not even

attempt to explain the background to Section 127(3) of the Code of Criminal Procedure, introduced as an amendment in 1973 specifically to accommodate Muslim opinion.

Shourie seems surprised that "no serious objection was taken by any one" when in 1979 and 1980 the Supreme Court decided two cases of maintenance of Muslim divorcees. But doesn't that in itself indicate that there might be something wrong about *Shah Bano* which provoked the agitation?

In the second piece, entitled *Facts belie government's case*, Arun Shourie endeavoured to demolish the Muslim case in a few simple steps so characteristic of his style:

1. He thinks that the commitment to minorities made explicitly at the time of framing the Constitution and consistently since then, does not stand the test of Article 44 which enjoins the State "to renounce practices derogatory to the dignity of women" and "to develop the scientific temper, humanism and the spirit of inquiry and reform." Is it a matter of scientific temper to club every supporter of the Bill a fundamentalist? Is it a matter of spirit of inquiry to obstinately refuse to accept the possibility of another system from ours being good?

2. The guarantee of freedom of religion, according to Shourie, must give way to the State's right to regulate or restrict secular activity. "In Islam marriage is a contract and not a sacrament" according to Shourie. Must we take his word? Is a dip in the river Ganga a religious or secular activity? Would the opinion of a Muslim environmentalist on that issue mean anything?

3 Shourie argues that one argument advanced against interference with Muslim Personal Law is that it has thus far not been resorted to. He goes on to state that this is not true because Muslim criminal law was abolished by the Indian Penal Code of 1860 and the CrPC of 1898 and the Muslim Law of Evidence Act by the Indian Evidence Act of 1872. But even Shourie should be able to tell that these are not aspects of Personal Law. Criminal law is in the realm of State activity. Personal law guides and controls private relationships. The case for non-interference in personal law is based

on the close nexus between Personal Law and social identity. And, incidentally, Shourie's researches are dismally inadequate if he continues to believe that "the wife has no corresponding power to free herself from even the cruelest of husband's".

4. Shourie believes that the claim that the Bill has at least provided a precedent for legislating Personal Law is spurious since this right was always there. But one might just ask whether having a right to legislate would automatically entail that it would be right to legislate. The point is that so long as a community collectively demands or expects certain legislative initiative there is no problem. The problem arises when legislation or judicial decision totally disregards established norms and widespread feelings of a particular community in the naive belief that what suits the majority is good for the minority as well.

5. The argument that the Supreme Court was wrong in interpreting the *Quran* is dismissed by Shourie in the belief that *Shah Bano* was decided on Section 125 of the CrPC and not on an interpretation of the *Quran*. Since the Court found that the *Quran* supported the view it took of Section 125, it mentioned that too. This is nothing but a travesty of the judgment. The Supreme Court very deliberately and categorically choose to interpret the *Quran* contrary to the centuries old opinion of Muslim divines and went on to say that if it were different, Section 125 would prevail.

6. Shourie found nothing incongruous in the Court introducing the discussion on the Uniform Civil Code. But he does not consider why it is that the Code should find a mention each time Muslim problems are discussed. Doesn't Shourie have an opinion on the constitutional amendment brought a few years ago to preserve the culture and law of the Nagas?

All in all Shourie seems superbly confident that superfluous arguments will suffice to demolish the case for Muslim Personal Law. He certainly has not made up his mind whether he wants to rely upon an "enlightened" view of *Shariat* or upon arguments which ignore the relevance of *Shariat*. In this he shares his confusion with Arif Mohammad Khan. For instance, they

have both questioned the propriety of using *Waqf* property for providing maintenance, since, as they believe, few *Waqf* deeds actually envisage such an object. Perturbed by the distressing picture painted of *Waqfs* in the *1976 Waqf Inquiry Committee Report*, Arun Shourie has already convinced himself that the *Waqf* Boards would not be up to the task of providing for indigent divorcees. But once again Shourie reads his documents very selectively. He found the corruption and decay amongst *Waqf* Boards and *muttawallis* but he overlooked the findings about a vast number of prime metropolitan area *Waqf* properties which have either been occupied by the Government or declared as "green area". *Waqfs* have decayed because they had lost their relevance. Now with the Bill we have a chance of revitalising this institution. The *Waqf* Boards must have a chance before other remedies are thought of.

By accusing the Prime Minister of dressing "its (his) funk in principle" Arun Shourie has purported to turn the debate into an ugly conflict. By instigating Congress MPs to defy a whip on the Bill Arun Shourie is fueling the fire of communalism already threatening our beliefs and institutions. There is just too much desperation in Arun Shourie's pleas to allow them to pass as the fervent beliefs of a secular citizen. Surprisingly, the Prime Minister is also accused of taking a political posture in the matter. Suddenly politics becomes taboo for a politician. But there is politics too in front page leaders of *The Times of India*. The Bill itself is a harmless piece of legislation. Section 3 of the Bill provides *inter alia* that the wife shall be entitled to "a reasonable and fair provision and maintenance" to be made and paid to her within the *iddat* period by her former husband." *Shah Bano* enthusiasts, till recently unconcerned about *Shariat*, have suddenly turned to it to find fault with the Bill. For instance, some have argued that by making the husband a "former husband" during the period of *iddat* the Bill has given impetus to the controversial triple irrevocable *talaq*. But this is at best sly sophistery. What else does one call the husband whilst a pronouncement of *talaq* is in effect but it is not yet irrevocable? Apart from the right to take her back before the end of *iddat* and the obligation to keep her well provided and in dignity during that period, the husband's status as a husband is suspen-

ded. Another name might be suggested for a separated husband but the substance of the provision will not change.

Again, some people, including Arun Shourie, have expressed the hope that courts will interpret Section 3 to include the possibility of enforcing *mata-bin-maroof* or a non-recurring transaction or settlement on the wife which will suffice for maintenance. They have once again admitted that the actual intent of Parliament is not taken seriously by them. Similarly, to pronounce the inevitability of the legislation being struck down by the Supreme Court, at this stage smacks of disrespect for Parliament.

The essential point about the Bill is that it has not been conjured from the seat of imagination and fancy. It purports to enforce the considerable rights of women which exist under the *Shariat*, but which, for many decades, were not enforced in India due to want of appropriate machinery. Similar possibilities exist for other aspects of matrimonial and family law. But we have to allow an wholesome atmosphere to return before discussions can begin on this.

Chapter Thirteen

RITES OF PASSAGE: THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

Opponents of the Muslim Women's Bill of 1986 seemed very surprised that it sailed through both Houses of Parliament with the utmost ease. It seems curious that they should have expected anything else in view of the Prime Minister's unambiguous commitment. But what seems even more curious is the fact that they seriously expected the likes of Pranab Mukherjee, a new born Congress dissident, to be able to snap the party whip. Surely Mr Mukherjee did not make the Muslim Women's Bill a bone of contention because he honestly believed India's future as well as the future of the Congress party would be critically eclipsed by the Bill, just as his own political career had by the Anti-Defection Act, 1985? He simply picked up the safest of political disguises available. The Muslim Women's Bill had, for several reasons, become a controversial issue in a party which does not encourage controversy. It seemed one could speak against the Bill without incurring the wrath of the party. So Mr Mukherjee hid behind its veil as he launched his first assault on Rajiv Gandhi's leadership. It just so happened that the party President saw through the disguise all too easily.

Some people have actually expressed surprise at the fact that the Congress party issued a whip. But anyone familiar with Parliamentary process knows that whips are commonplace and certainly do not smack of dictatorship. After all it was this very Parliament which enthusiastically voted for the Anti-Defection Bill which made the party whip the test of defection. There is a peculiar perversity in the arguments of the opponents of the Bill: "An overwhelming majority of Muslims support the *Shah Bano* judgment," they claim. Yet they concentrated their efforts on the Prime Minister's Office rather than streets and *mohallas*. Their idea of democracy seems conveniently limited to expecting the Chief Executive of the country to simply embrace their

position and give a go by to the preferences of millions of ordinary Muslims. Every form of illiberal pressure was used—threats to challenge the validity of any legislation on the matter to be passed by Parliament; inflicting ridicule and insult upon supporters of the Bill by calling them 'obscurantists' and 'fundamentalists'. In essence the debate was deliberately lowered to a mean level of political animosity. All pretense of contempt for actual communalists was deserted in a desperate attempt to muster up a respectable body of antagonists of the Bill. Ignorance and sly intent ruled the debate in the name of liberalism and a sudden birth of concern for feminine prospects. The thunder in the speeches of BJP members, purporting to protect the rights of Muslim women, might have come as a startling discovery for the student of Indian politics. Perhaps even the BJP had turned to a new manifesto!

Both before and after the passing of the Bill eminent journalists like Girilal Jain and S. Sahay continued a bitter attack of the Bill and the real or imagined reasons for which it was supposedly passed. But the clarion notes of dissent and contempt flowed virtually every day in the columns of the Calcutta daily, *The Telegraph*. The newspaper does not command the same attention as *The Times of India* or *The Statesman* but it has a clever editor who tries to delve deeper into national politics (sometimes even becoming a willing participant) than the pontifications of the older editors permits them. But even more than that, Editor M.J. Akbar and his volatile Delhi Special Correspondent, Seema Mustafa, were the only Muslim journalists of the English press who were, and who were seen to be, taking a keen interest in the controversy. The only other Muslim journalists who addressed themselves to the issue were Saeed Naqvi (in a couple of brilliant exposes about the *real* Shah Bano) and Javiad Laiq (in a couple of general pieces which did not depart from the theme of "much to be said on both sides.").

For M.J. Akbar, the controversy could not have come at a worse time. He had just about begun to feel comfortable in his admiration for the Prime Minister, having overcome his initial reservations caused by equally transparent admiration for the 'great walker', Chandra Shekhar. To be accurate, Akbar's

rejection of Chandra Shekhar, Hegde, George Fernandes, *et. al* dates back to an enigmatic piece, entitled "*Election Fantasies*", written shortly after the last Rajya Sabha elections. Syed Shahabuddin, another politician who once figured in the Akbar line up of favourites, explained away the *volte-face* as something Akbar had given a prior warning of. "If the Janata party deserts Muslims I will have to jettison it," Akbar is reported to have told Shahabuddin Deserting Janata may have had its rewards. Akbar clinched the first independently produced news-feature programme on *Doordarshan.* But good things and indifferent programmes do not last forever. *Newsline* collapsed, but not before Akbar had returned to his newspaper columns with great gusto. He pronounced the Hermes aircraft carrier deal to be a "national disgrace" and disclosed to the world that Mrs Thatcher had received political resuscitation by dumping junk on India.

Enraged with India's policy on defence purchases, Akbar was even more perplexed at not being able to decipher the Prime Minister's signals on the *Shah Bano* controversy. To begin with he simply followed the scent of Arif Mohammad Khan. He brought Khan and Shahabuddin in a frontal confrontation on *Newsline.* Shahabuddin survived the carefully loaded questions and the editor's cuts. He went on to win from Kishanganj while Arif Khan drove himself to distraction labouring on the image of liberalism, a word he can scare pronounce. Akbar retreated into silence, breaking it briefly in a vague and meaningless piece on national integration and the *Babari Masjid* scandal. From then to the passing of the Bill he left the battlefield to his dimunitive assistant, Seema Mustafa. A pattern was to emerge in her reporting which takes a little effort to discern but which does give an insight into the rearguard action contemplated by Arif Mohammad Khan.

Some days before the Bill was introduced in the Lok Sabha, close confidants of Arif Khan made it known in Delhi and Lucknow that the controversial Minister would try to divert attention of Muslims to the *real* issue of the time—the *Babari Masjid* affair. He would resign from government if his demand to restore the mosque was not heeded. As it turned out, the Prime Minister moved too fast. The Bill hit Arif Khan as a thunderbolt, virtually forcing his hand to the resignation letter.

Seema Mustafa, who participated actively in the orchestrated opposition to the Bill through seminars and rallies, found applause for Arif where there was none, logic in his arguments where there was none. Even as Arif was himself beginning to accept defeat—"In fact I have myself said that the blame lies with people like me who after having spoken in Parliament did not go out to mobilise public support against the activities of the communalists"—Seema Mustafa was bravely prompting him from the prepared dramatic text thus:

Q: Is the Bill a greater issue amongst the Muslims of Uttar Pradesh, where you come from, or is the opening of the Ram Janmabhoomi temple agitating them more?
A: It is the Janmabhoomi issue which is engaging everyone's attention at the moment. The Bill became an issue only after it was introduced in Parliament.
Q: And all the communal riots are taking place because of the Ayodya issue?
A: Definitely.
Q: So that will have a bigger influence on the votes than the Bill in the final analysis?
A: I think you are right.

One is reminded of an electrifying scene in the film on the life of General Patton. As Rommel's Panzers advanced in the last great battle of North Africa, General Patton, surveying the field through his field binoculars, let just a hint of a smile break his impregnable countenance and pronounced: "Rommel, you magnificent bastard, I have read your book!"

Of course Seema Mustafa developed her personal opposition to the Bill into fairly elaborate arguments, far beyond the final verdict of Arif Khan that the Bill was 'unIslamic and inhuman'. In an editorial page piece in *The Telegraph*, entitled "How Congress (I) Shifted the Onus of Divorce Bill", she belaboured Arif Khan's basic contention that the Congress did not actually believe the Bill to be fair and judicious but was simply surrendering to fundamentalist pressure. Thus the thirteen hour long Lok Sabha debate revealed just two stark facts to Ms Mustafa—"That the present leadership had completely false, and hence

dangerous, notions of secularism, and that the members of the Congress (I) today are totally without conscience." These conclusions may arguably be held by many persons since they are really quite polemic in nature. But what on earth allows her to proceed further—"Mr (Arif) Khan's assertions assume greater significance in the light of the Congress (I) argument that the Bill was framed in deference to the wishes of the majority of Muslims. In fact his attack on the Bill, which was received by stunned silence from the treasury benches and a burst of applause from the opposition, effectively gave a lie to the government's argument that the provisions of the draft legislation were in conformity with Muslim opinion." Just one sharp burst of a politician, whose name is taboo in his community, was ample proof of Muslim opinion! That came as gratuitous advise on how to judge public preferences in a democracy! What follows had the real sting. Describing the Congress (I) stand on the Bill in Parliament as inconsistent with what had been said outside, Seema Mustafa accused the ruling party of deliberately indulging in patent communalism. She seriously believes that by the time the Bill came to be debated Congress (I) had shifted its posture of claiming the Bill to be "pro-women and secular" to the assertion that it had to be passed to appease Muslims and if it were regressive so be it. From this Ms Mustafa drew the inference that the government distinguished between majority and minority; that it also believed Muslims were against progress. She fortified her position by relying on Mr K.C. Pant's speech, in turn questioning his factual premises and ridiculing his concern for national unity. In this she found the government wanting in its neglect of the "fairly large section of Muslims which has been holding rallies, seminars, conventions throughout the country against the Bill and for reform," and instead siding with "fundamentalists who might be more vocal but are definitely not in the majority." Only two points might be made about this—first, Ms Mustafa is obviously not very good at counting heads. And, second, that she has not read Articles 25 to 30 of the Constitution of India.

In the speeches of Law Minister A.K. Sen, K.K. Tiwari, Eduardo Faleiro and Arun Nehru, Ms Mustafa found the same refrain of an odious reference to distinct 'Muslim perception';

the reprehensible distinction of 'their views' and 'our views' as though the government was making a last moment effort to disassociate itself from the *raison de etre* of a Bill they were being forced by circumstances to support. And thus the government is supposed to have unfairly painted the entire Muslim community of India "black for wanting regressive laws and for 'threatening' the unity and integrity of India if their demand was not accepted." It does not matter to Ms Mustafa and other opponents of the Bill that the Muslim community thinks otherwise.

Whilst Seema Mustafa directed her barbs at the Congress government, her editor sharpened his quill to undo the damage he did to the government by permitting Shahabuddin to overwhelm Arif Khan on his *Newsline* programme. Here were two birds, if ever a stone should kill. Though Arif Khan no longer mattered to the Government, Shahabuddin certainly continued to rankle. An attack on Shahabuddin would count as a favour to the government and allow the attacker to dodge the real issue of the Bill. So Akbar launched his broadside—*The Dangerous Politics of Syed Shahabuddin.* This man is dangerous because he is brilliant. This much Akbar conceeds to the devil. But he forgets to inform his reader that Shahabuddin was a good friend of his, quite like Chandra Shekhar, George Fernandes and Hegde once were. Perhaps there was also no need to remind the reader that the same dangerous man was almost singlehandedly built up into a 'star' in the columns of two publications which Akbar once edited simultaneously: *Sunday* and *The Telegraph*.

A man you have consciously projected is not easy to demolish without an adequate smokescreen. So Akbar goes scurrying back to 1947 and his own dangerous thesis on Partition. Curiously, unlike Seema Mustafa, Akbar conceeds the existence of a 'minority perspective'. But having said that he cannot resist the temptation of reductionism. For no obvious reasons he finds Jinnah becoming the rallying point of Muslim communalism and indeed actively encouraging it. The suggestion is obvious—there were no objective circumstances, just the personal ambition of one man. The thesis is quite evident:

> Maulana Azad was a Muslim leader without being a leader of only the Muslims. And that was the message he constantly sought to send; that was the bedrock of his political faith. He had a contribution to make in every other aspect of the political spectrum. Jinnah was a leader only of Muslims. That was the fundamental difference which eventually led to the bitter, untidy scalpel across the destiny of one family. One does not say that Mr Shahabuddin is leading the march to another Partition; times have changed, and history when it does repeat itself does not do so in a simplistic way. But there is a politics of unity and there is a politics of division; there is a politics that searches for the bonds that unite and the balm that heals, and there is a politics that says that safety is only possible in separation, if not in Pakistan then in your own physical and mental ghetto. The politics of Mr Shahabuddin is dangerous because he is proud to be a successor of Mr Jinnah rather than of Maulana Azad.

Having established Shahabuddin's nexus with Jinnah, Akbar follows him from Ranchi to Krishanganj (the journey of Shahabuddin's life), arriving at the last station in the sanguine belief that Muslims of Kishanganj are possibly a little sorry that they voted for a man who is out to create trouble for 'their children' because of "his increasingly strident statements" which would incite riots. These good people "had sent a member to Parliament to represent them in every aspect, not just on religion". By that one would have thought Shahabuddin is a fool, not a dangerous man. Just as the brilliance of Shahabuddin collapses, Akbar gives a final blow:

> Shahabuddin, they said, had become an extremist. And they did not want an extremist as their member in the Lok Sabha. I assure you I did not suggest the term 'extremist' to them.

So, with the extremist gone, what are we left with? Liberals? But they too, according to Akbar, have lost:

> The liberals lost the battle for two reasons: they lost the Muslim masses on the *Shah Bano* issue; and second, their

> arguments were one-dimensional, dealing strictly with the rights of women in Islam when the battle had in fact reached quite a different dimension altogether. What was being argued in towns and villages of the north of India was not the rights of women in Islam but the rights of Muslims in India.

It does credit to Akbar that he finally did perceive the reasons why the Bill succeeded. But that still does not explain the failure of liberals. Perhaps the true liberals never did join the debate. Liberals do not, by definition, believe in one-dimensional positions. Liberalism is a cogent and comprehensive structure for testing beliefs, not a convenient disguise for one's prejudices. But liberal, or otherwise, Akbar at least does not share the blinkers of Ms. Mustafa. He admits that the *Shah Bano* effect rattled Congress in the byelections of Bijnore and Kishanganj:

> The Congress just had no clue what had hit it. Still basking in the English-medium liberalism which defines the attitudes of many of us, it was simply staggered by the extent of the Muslim anger against it.

But having admitted the inadequacies of 'English-medium liberalism', Akbar still does not give up the equally 'English-medium ghost' of Jinnah and fear of a bloody confrontation induced by the politics of Shahabuddin. It is time that the mask was ripped apart and Akbar's devious apology rejected. The confrontation was a creation of the likes of Arif Mohammad Khan and M.J. Akbar. It will come again and again if implausible but convenient historical theses are accepted as intellectually and morally acceptable precepts for contemporary political decision making. The Indian Muslims have no fear of being swamped or having their identity obliterated. But they do nurse a grievance about being told that the apprehension of majority communalism does not allow them the basic expectation of free citizens. It adds insult to injury when one of their own takes it upon himself to gag them or when their legitimate preferences are sought to be undermined with the help

of unpleasant theories of Partition. In the ultimate analysis it is important that Muslims have jobs, homes and education. But they also believe that they must have religion too. A liberal does not arrogate to himself the right to decide which preference of an individual or a community is intrinsically more valuable.

Chapter Fourteen

ANATOMY OF COMMUNAL RIOTS

> What begins these riots? Is it a little boy who throws a stone who begins the riot? Is it the person who might do the first killing who begins the riot? Or is it the atmosphere that is spread by speeches?
>
> The late Prime Minister, Mrs Indira Gandhi, intervening in a debate on communal riots in the Lok Sabha in 1970.

Periodically since Independence, India has had to suffer sporadic social insanity described as 'communal riots'. Inevitably the antagonists are Hindus and Muslims. Time and again the same pattern of inhuman cruelty and criminality finds its utterance in the complete rupture of the social fabric. Essentially communal hostility between the majority community and the minority finds two fertile factors for sustenance and gory succour. First, a deep and disguised growth of hate which cannot, ostensibly, be attributed to a specific reason. Perhaps a gradual accumulation of social grievance, instigated or contrived, real or as an alibi for failures of our social institutions. Second, the reaction against changing patterns of economic development of the Muslim community due to gradual sedimentation of the post-Independence economy of the Muslim community and, in some places, by the arrival of the 'twentieth century Arab trader'. Like his predecessor of 600 years ago, the Arab businessman has brought the opportunities of a lucrative market and opened up possibilities of a grand revival of traditional crafts and occupations of middle and lower class Muslims.

Whatever may be established as the immediate instigation of the November 1984 riots against Sikhs, apart from the obvious cause of Mrs Gandhi's assassination, those incidents brought the gruesome reality of riots to every complascent home in India. One has only to look dispassionately at the shocking holocaust

to begin to doubt one's confidence in civilization. Sikh politics and, correspondingly, the perception of other Indians of the Sikh community due to political developments in the Akali Dal as well as in other premier Sikh institutions, changed considerably in the years following upon Mrs Indira Gandhi's return to South Block as Prime Minister in January 1980. What started off as an internal wrangle for power within the Sikh *panth* spilled over to Hindu victims either as bystanders or critics of militant Sikhs. It is now a matter of terrible history as to how and why the wrath of Sikhs turned on Mrs Gandhi. In any case, whatever might have been the position before Operation Bluestar, once the Indian Army advanced into the precincts of the Golden Temple, Akali Sikhs and other Sikhs of more extreme persuasion, acquired a negative posture and sullen defiance which did not go unnoticed. Within hours of Mrs Gandhi's assassination, sanity was temporarily ditched. Right across the country, but more so in northern India, mobs of barbarians violated life and liberty of citizens. It was the shocking defiance of norms of civilization. Humanity was ruthlessly violated for three days in our midst. Quite sensible people, far from being killers, nevertheless could not resist attributing the violence to 'poetic justice' In the same streets and localities, with the scars of riot and mayhem having disappeared, one walks today, oblivious of those senseless moments.

Curiously, there were certain special characteristics of these riots. Mostly men were slaughtered while women and children were allowed to run away. The killings were largely by burning and not by stabbing or gunshots. All known commercial establishments were purported to be destroyed. The fact that commercial property bore the burnt of the madness, it might be argued, indicates that the 'hidden hand' thesis applied to this vile endeavour as much as it does to the run-of-the-mill social movement. Anyone who saw the November 1984 riots closely would know that what happened could only be described as madness. No rational explanation can ever suffice.

The November 1984 riots had a very sad irony for Muslims. For one, there was a clear sign of a breakdown in national equilibrium. No community, least of all a minority, is safe when that happens. In terms of political clout and community

resources, not to speak of social belligerence, Sikhs far outclass Muslims, even though they are but 1/10th of the latter's strength in numbers. Yet they were subjected to an unrestricted devastation. These were crucial lessons for Muslims.

On the other hand, there was also a terrible satisfaction amongst Muslims, who had not completely forgotten the Partition's unpleasant aftermath. Hindus and Sikhs were alike paying for their 'sins.' They were paying for the blood they had drawn in 1947. They were paying for the life of Mrs Indira Gandhi who, after her father Jawaharlal Nehru, was perceived as the "only hope of the Muslims" in India.

The fact remains that many months after the riots no one really knew what it is that sparks off such a horrifying enterprise or, indeed, why it is that the administration and police are restricted to the role of political scavangers. Why is it that no emergency procedure or contingency plans are automatically put into action? Why is it that the vast network of political sniffer dogs, who collect intelligence every day, are unable to provide adequate warnings? Why is it that explosion of communal violence almost invariably gives rise to accusations of unpardonable partiality or incompetence in the reaction of state agencies?

Something may be said by way of mitigation in the November riots. An unimaginable, awful event had occurred, leaving the police in the capital city with a lot of egg on its uniform. Emotions of two communities were already pretty overwrought. The death of a towering Prime Minister left a startling understaffing of the political level of government. And, most of all, the new Prime Minister, grieving for a departed mother, was the focal point of national mourning.

But the riots which have shattered the lives of Muslims in Ahmedabad, Moradabad, Meerut, Bhiwandi, Bombay, Jabalpur, Hyderabad, Aligarh and a long line of other towns and cities, have occurred in ostensibly normal times. Yet the state machinery has failed time and again. Riots have sparked off by a fight between pickpockets, by the actual incidence or even a rumour about the discovery of animal organs in a temple or mosque, by the stoning of a religious procession passing by a place of worship, by the chance straying or deliberate shepherding of an

animal near a place of worship. The actual incident, though it comes as a sudden occurrence to people elsewhere, is usually painfully and patently inevitable in the eyes of people who actually get hit. There are always warnings, predictions of an impending riot. There is always some administrative bungling by an overzealous or an uninvolved civil servant.

Though some incidents have a macabre distinction of involving a virtual mowing down of a large number of victims in one swoop, there are many more in which the casualties are few and sporadic. *Kheenchna* or 'pulling' is the word used to describe the standard form of killing. A victim is snatched or battered to instant death. The body is then left just there or disposed of in some nearby drain or ditch. A fear psychosis is created. Rumours begin to ride roughshod over reason. Just when the administration is most needed to reassure and protect, it becomes elusive.

Once the early stage of killing is over and the dawn to dusk curfew has settled the dust of the disturbances, retaliation begins—not between communities but the administration and the community it blames for the trouble in a callous palm tree justice exercise. It is the usual complaint of Muslims that they are picked on first and forcefully despite being the weaker of the two communities and the inevitable sufferers of the riot. Allegations of witch hunts and humiliation abound.

This is where a serious problem arises of the caste and religious denomination of the officers and men engaged in the services. Invariably, paramilitary forces and armed police deployed in riot-prone or riot-affected areas have an overwhelming majority of non-Muslims. There is seldom any sympathy or empathy for Muslims. Relations between Muslims and the forces deployed deteriorates very rapidly and with it the bitterness of the riot is exacerbated.

These are all mundane observations for anyone who has followed communal riots over the years. Indeed, the voluminous *D.P. Madon Commission Report on the Bhiwandi Riots of 1970* is a *locus classicus* on communal riots. The Police Commission Reports deal very extensively and comprehensively with this kind of violence. The standard reasons are known. The inevitable shortcomings are recorded. But these reports, or indeed

the hundreds of other reports, have not contributed an iota of success in preventing further holocausts. Quite recently in Delhi, two young boys were shot in the head by a local SHO of an Old City police station. A Magisterial enquiry was promptly ordered. But it does not take a judge or a magistrate to convince a person that, so long as no public or private property is attacked, and so long as no life is endangered by protesters or rioters, there is no justification for firing, not to speak of shooting to kill. Inevitably the incident gets lost in enquiries and complicated departmental proceedings and seldom would there be a clear decision, widely circulated, to ensure enhancement of public confidence and deterrance for other unthinking governmental employees.

Time and again, there is talk of diluting and mixing the ethnic and community representation on security services or to start special riot protection forces which would reflect the concern for a greater inclusion of Muslims. But nothing seems to have come of it. Of course, with the best of intentions, there would always be the problem of rapid deployment.

Ultimately, it is true that communal incidents are not sufficiently expensive for instigators in terms of punitive and deterrent sanctions. Besides, with experience, greater sophistication is introduced into the exercise of fueling a fire of communalism. To begin with, the confrontation was straightforward—Hindu versus Muslim. Then came the variant of Muslim versus (Hindu) police. Now it is Muslim versus Backward Class (Hindu) and Tribal versus Muslim. Both Assam and Gujarat, though under strain of a broader confrontation, were, infact, narrow battlegrounds against Muslims when it came to fatal blows. Nellie will be a permanent grave of Indian secularism in the east whilst Ahmedabad becomes a permanent reminder that many, if not all, social disagreements finally seem to engulf innocent Muslims. They die if they oppose Harijans. They die if they support Harijans.

The November 1984 riots and the recent Ahmedabad riots have thrown up a startling new theory about riots in which two or more communities are involved. The theory has it that the days of hackneyed communal riots may be over. Instead something curious, though no less lethal, has emerged—the 'secular'

riot. Whatever facts are established by the Ranganath Misra Commission of Enquiry are not expected to undermine this theory. This theory has it that Sikhs were slaughtered in the November riots not as a consequence of communalism but as a passing aberration in our secular thinking. Similarly, it is argued that communal exponents have withered away in neglect. We are now confronted with the modern secular antagonist like Arun Shourie, whose attacks on Muslims and other minorities and their way of life are based on an appeal to rationality. But the attacks are far more crippling than the petulant outbursts of the Hindu revivalist pedagogues. This is possibly reflected in the most recent pronouncements of RSS Chief, Balasaheb Deoras, on the issue of Muslim Personal Law. His current position, surprisingly, is that Muslims should be allowed to retain their personal law and institutions. Of course, at the same time, Deoras would have Muslims prove their unqualified loyalty to India. Arun Shourie on the other hand, argues that these institutions should be overcome as a prerequisite of secularism and any resistance by Muslims should be condemned as antisecular and, therefore, anti-Indian.

The new RSS position can be explained in terms of an acceptance that a large scale cultural conversion is neither possible nor necessary for the objectives of the organisation. The question is of continued domination or enhancement of the domination by Hindu culture. If attachment to personal law and religious and minority educational institutions inevitably ensures that Muslims remain backward, the RSS sees no reason to disturb the *status quo*. Such economic advancement as might threaten the balance of power can be easily arrested through periodic strife.

I have personal experience of two relatively minor riots, though at the time they seemed pretty serious and forced national leadership to take a special interest. Both incidents are representative, indeed amazingly, of the riots of post-Independence India. Their handling, too, can be said to be the stock response of Indian politics.

In 1979, as talk of elections was beginning to fill the Delhi air, suddenly another unpleasant odour emanated from the damp and decaying streets of the walled city. Two unused

mosques were the general cause of a snap riot whilst the immediate provocation was an altercation between two pickpockets, as reported by some, or two fruit vendors, as reported by others. Some shops were gutted in Urdu Bazar. A mob attempted to storm the Jama Masjid. Police managed to separate the warring groups and curfew was clamped. Fortunately no lives were lost. Imam Bukhari, sixth in the line of Shahi Imams installed by Shah Jehan from an eminent family of Bukhara, took it upon himself to express the grievances of Muslims. Janata rule had collapsed. Charan Singh was Prime Minister. Imam Bukhari had explicit support of H.N. Bahuguna and Jagjivan Ram. But he was pragmatic enough to know that the future lay with the Congress. However, the Congress party, after the 1978 split, was still too perplexed about a channel of communication with Muslims. Rukhsana Sultana had ruled the muddy pavements and the crumbling redstone structures during the Emergency. Now her name was taboo.

Out of sheer curiosity I visited Jama Masjid late one evening. There were make-shift barricades and vigilance watchout men swarming the place. There were some lazy policemen too, but little attempt to enforce the curfew stringently. I went back home to persuade my father, Khurshid Alam Khan, then a Rajya Sabha MP, to visit the area as well. He agreed immediately and we arrived back at Jama Masjid by 11 p.m. We went up the steps and beyond the threshold with the ageing Mughal doors pockmarked with a few bullet holes, remnants of a past confrontation. The corpulent Imam was holding conference with local eminent persons. He greeted the unexpected visitors and began his predictable complaint against police brutality. It was only a meeting to break the ice and that is all that happened. The chill remained.

Next day I tried every possible device to stir some interest amongst Delhi Congressmen. The standard response in such circumstances is: "It's too hot. Stay away!" And that is what I got. Finally, when all else failed, I asked my mother to speak to Mrs Gandhi. We reached 12, Willingdon Crescent and waited a quarter of an hour for Mrs Gandhi to return from some engagement. When she did and we told her of the state of affairs at Jama Masjid she asked, "What shall we do?" We suggested that

she should visit the area. Mrs Gandhi readily agreed, even brushed aside an aide's remark that an afternoon visit would upset her schedule. So the visit was fixed for 4 p.m. that day. By the time appropriate police permissions were procured and the time came for departure, Youth Congress leaders had gathered to accompany Mrs Gandhi. Even Mr Sanjay Gandhi was convinced to go along. The Police Commissioner had relaxed the curfew for a few people but, in fact, at least two hundred persons arrived in a cavalcade of cars and other vehicles.

Mrs Gandhi, at the head of a gradually swelling crowd, briskly walked down Urdu Bazar, not like a vanquished politician but like a champion. Someone showered rose petals. Sanjay Gandhi was right beside her. Someone in the crowd whispered: "If she can get such a response in Jama Masjid...." The riot was forgotten.

As Mrs Gandhi turned around to walk back towards Jama Masjid, I spotted my father on the steps. A few steps above him was lurking Imam Bukhari's son, Ahmed Bukhari. I dashed up to him and asked him if the Imam would meet Mrs Gandhi. He said, "Yes." I asked him to take my father upto Imam Bukhari and rushed down to Mrs Gandhi to suggest that she should meet the Imam. She turned for a moment, hesitating, but then confidently ignored the pleas of her party men to first go towards Chandni Chowk, and, in her characteristic style, ran up the Masjid steps. The meeting with the Imam was cold but comfortable. Communications had been established. Most of all, Sanjay Gandhi had been inside the Jama Masjid.

The first phase had been successfully negotiated. But what next? Of the entire array of Muslim leaders including Mir Qasim, then the senior most, somehow A.R. Antulay, then General Secretary of the AICC(I), cleverly manoeuvred himself into the sole negotiator's role. Nothing more was heard of the dialogue. Sanjay Gandhi, when approached, shrugged off any suggestions for further steps by saying, "Let's not give the Imam more importance than he deserves." "But Bahuguna is working on him feverishly," we said. Sanjay Gandhi concluded the topic with a flourish: "Bahuguna has nowhere to go. Don't worry about him." Within weeks Bahuguna became Secretary General of the AICC(I) and the Imam extended his tacit

support to the Congress.

It isn't that Mrs Gandhi really needed Imam Bukhari to win the election in Jama Masjid, not to speak of the rest of the country. It was just that, by a series of coincidences and, of course, the Janata party trumpeteers, Imam Bukhari had acquired a status which could not be ignored at the time of election countdown and communal tension. It was a grand symbolic gesture of goodwill towards Muslims. It was taken with that spirit but, once again, nothing permanent was achieved. Some Muslims may have been a little sceptical about the affair but, on a balance, everyone thought that it did a world of good.

Anyhow, that was only one aspect of the trouble. I decided to get to its roots. A friend, Amir Raza Husain, and I, posing as newsmagazine correspondents, visited Dariba, where the controversy had sparked. The first dilapidated mosque did not seem to pose too immense a problem because nobody was really sure what 'offensive' or 'inconvenient' plans were in store for it. Since the young Muslim lads who had touched upon the issue were not traceable, we proceeded to the other place, the Nawabwali Masjid. The rainbow did end there for several reasons. There was gold there but also the standard formula for communal outrage. Many years ago, a *nawab* lived in a *haveli* in the vicinity. He constructed the Masjid on the main Dariba, the jewellery market, for his personal worship. The actual Masjid is on the first floor with a few shops on the ground level from which sufficient income was derived for the upkeep of the mosque. The *nawab* migrated to Pakistan and the Custodian of Evacuee Property acquired the mosque. Now, it shouldn't have been very difficult for the Custodian or someone else to formulate rules or norms regarding places of worship which notionally belonged to private parties. Since there were no such rules, the Custodian did the next best thing—he auctioned the shops which were bought by the sitting tenants, a famous family of Delhi called Chandiwale.

The new owners left the mosque intact though the passage of time and the indifferent climate of Delhi gradually took its toll. At least one of the three domes caved in. As business expanded the owners burrowed deep into the basement of the building

and constructed an extra room on the terrace. Then came trouble. Though the Nawabwali Masjid is literally a stone's throw from the grand Jama Masjid, some young Muslims insisted that they would offer Friday prayers at the former. Nobody prevented them to begin with. But on successive Fridays, their numbers increased till they were far beyond the number conveniently accommodated. The Chandiwale were getting nervous. But, more than that, other shopkeepers got restive. The Jama Masjid-dominated Shopowners Federation pressed Chandiwale to take a tough stand. The recipe was ready for violence.

Upon enquiries it was discovered that the *Waqf* Board had filed a suit for declaring the transfer of the shops legally void. But title suits and property disputes get into courts for permanent residence. In the present case, nobody can even guess that one day this matter will be sorted out by law.

Intermediaries and do-gooders attempted to get the dispute settled. But it was soon apparent that nobody had the *locus standi* to speak to the Muslim lads and nobody could really prevail upon the shopkeepers. Even Imam Bukhari, who had only days earlier appeared as the definitive spokesman of Muslims, seemed evasive about using his influence. In fact, it became quite clear that he had no influence to use. The Chandiwale, in fairness, were prepared to spend money on repairs but expressed reservations about a permanent resident Imam. Meanwhile, the Secretary of the Federation was becoming beligerent. "If we allow Chandiwale to compromise we will all be driven out of our shops!" was his vehement stance. To me his fears seemed far fetched. And then came the real broadside. "You know this mosque was built on a temple!!" This story was a familiar one. I asked him to prove it. He had the predictable reply. "We found old carvings in the foundations." When I pressed him further he took me to the parapet and pointed to an obviously recent structure about fifty yards away and said, "Look there is the temple."

This happened in 1979. Seven years later police pickets still crowd the narrow Dariba on Fridays. Periodically arrests are made. The original group of Muslim youths has drifted away or joined the ruling party. But their faithful successors have kept fear alive. It will take just one silly police officer to light another fire.

The Meerut riots of 1982 were, in a sense, more serious because lives were lost. Seven Hindus and 24 Muslims (eight in police firing) were officially stated to be killed; 53 Hindus and 27 Muslims received injuries; 35 Hindus and 126 Muslim houses and three mosques were damaged. Property worth Rs 28 lakhs was destroyed. And, of course, once again secularism and human dignity were mocked.

I visited Meerut about ten days after the worst was over. We were part of a hastily put together highpowered group of three senior Muslim Ministers, including Mohsina Kidwai, who represented Meerut in the Lok Sabha. At Meerut another two Muslim Ministers from the UP government joined the group. Also at hand were Congress party MLAs, except Manzoor Ahmed, who seemed to be out on a limb. The cavalcade drove up to the imposing PWD Rest House where the Ministers were greeted by several hundred spotlessly white khadi-clad petty politicians and workers. Not a single person who could claim to have suffered during the riots was present. In fact, the attention of the persons present was directed at swiftly establishing a case against a particular group, within or without the party, and graphic descriptions of the horrifying episodes were resorted to only as an effective backdrop for their personal themes. The Ministers tried to sit together and receive representations but were soon overwhelmed and scattered themselves in separate rooms. That gave greater opportunity for political stabbing at least as vicious as the actual communal stabbings in the streets and *mohallas* of Meerut. A game of musical rooms was played thereafter as the Ministers moved from one room to another in an attempt to make some sense out of the chaos. Then the district officers arrived for a briefing which lasted an hour. Someone suggested an elaborate lunch. At that some Ministers decided to leave. At no point of time did anyone seriously contemplate the possibility of conducting the distinguished persons through the riot-affected areas and of introducing them to the sufferers.

Mr N.C. Saxena, formerly of the Minorities Commission, undertook a detailed study of the Meerut riots of 1982. His conclusions must indeed merit most serious attention. A paper which must really be read in its entirety can be summarised most inadequately thus:

1. Of the 727 complaints received about 92 per cent were from the Muslim community. By the end of 1983, more than a year later, only 10 per cent of general complaints were investigated. The rest 90 per cent were against the police. There is still no word of what happened.

2. The District authorities tried to make out that the worst period of communal tension in September-October 1982 was caused by the mysterious murder of the *pujari* of a disputed temple on Mohallah Shahgasa on 6 September 1982. According to N.C. Saxena: "The aggressiveness of the Hindus, unlawful activities of the Hindu communal groups and the police inaction prior to the murder of the *pujari* was not highlighted in either the reports of the District authorities or in the national newspapers."

3. On 12 August, Janmashtami day, about 500 Hindus tried to invade the *kotwali* for procuring permission for an all-night *arti* at the disputed spot. Only four people were arrested. On the next day 250 Hindus agitated before the *kotwali.* Only 19 were arrested. All 23 were released on bail under pressure of Hindu leaders.

4. On four separate days, pieces of objectionable meat were found in the premises of mosques. No arrests were made.

5. The murder of Ram Bhole, the *pujari*, who was a drug addict, led to the arrest of 114 Muslims. But, to this day, the crime has not been solved.

6. Whilst Hindus were released quickly from the police station, Muslims were subjected to severe assault and torture. Press reporters saw many persons with bloodstained clothes at the police station. The District Magistrate and DIG who visited the station must also have seen them but there is no indication that they intervened.

7. The list of persons arrested for the murder of the *pujari* included a journalist, Fazlur Rahman, and the son of city *qazi,* Zainul Rashidin. The latter was beaten up brutally while in custody. "During informal discussions the officers admitted that his arrest was the most indiscreet one as the town *qazi* had been throughout cooperating with the administration and when his son was not only kept in jail for about 20 days but also badly thrashed up, the attitude of the *qazi*

changed to insolence." This contributed a great deal towards deterioration in the situation and the police clashes with Muslims.

8. Muslims were arrested if they went to the police station to lodge complaints.

9. By 30 September, when the most dreadful phase commenced, the temple was forgotten. On 1 October, PAC attacked the residents of Feroze buildings, killing 23 Muslims. Unofficial reports put the dead at 100. Houses were raided and ransacked. Civil authority was ignored.

10. The Chief Minister of UP said on the floor of the Assembly: "I do not want to defend the deeds of the PAC. If they have committed mistakes, it is bound to come out during the enquiry. Those found guilty will be punished."

11. Police claimed that they had to enter to prevent attacks from the terrace of the building. But it seems that they were more concerned about the fact that the building housed innumerable witnesses of an earlier indiscriminate attack by the police on innocent bystanders in front of the building. In any case, there was no roof top battle. The bullet marks and blood stains were all over the rooms and courtyards of homes.

12. Local Hindu newspapers were allowed to continue publishing provocative news items like: "PAC Jawan Missing," "Headless Corpse of Police Constable Recovered", "District Administration does not permit Mrs Mohsina Kidwai to visit Meerut" and "DM accuses Shri Mansoor Ahmed, MLA".

Finally the government tried to make out that PAC had run amuck, disregarding senior officers. But the District Administration had from the beginning perceived a threat only from Muslims. The orders from the senior officers in the district to the police could be summarized in one phrase: "Muslims must be taught a lesson." The PAC and the police faithfully implemented this policy.

Mr N.C. Saxena's personal endeavour would shame any judicial enquiry. But for the present this is all we have. The last

word might be given to Prof Madhu Dandavate:

> Some Hindus told us that the complaint that they (Muslims) are giving, that is all drama. And when in the Dharamshala, when we met women, others were telling us that that is all drama. Sir, it appears to be a clash of two dramas. But it was a reality. I told a friend of mine when we went to the Muslim localities and we were told certain dead bodies were lying there for two days, someone came and told me: "This is all drama." I said, "A living individual can play a drama, but a dead body cannot play a drama."

The drama or the tragedy of Meerut is the formula for all such tragedies. The *peepal* tree or the *neem* tree, the disputed platform, the unclean meat, the riot, the police atrocities, the arrests, the inquiries, and the wait.... for the next round. Because all that we succeed in doing is the solving of the problem created by the problem. Isn't somebody answerable?

Chapter Fifteen

MODELS OF MUSLIM LEADERSHIP: SHAME, SHAM AND SHAMSHER

It is only upon two occasions that questions regarding the legitimate expectations of Muslims in India and the appropriate approaches of their leaders arise—when innumerable ordinary Muslims are mercilessly slaughtered in communal riots of the kind that shame any civilisation and when something happens which evokes the curiosity of non-Muslims about the nature of Muslim Personal Law. Though, mercifully, the incidence of communal riots in the recent past has remained low, the intensity of harm and hatred was re-emphasised by the Bhiwandi and Ahmedabad riots. At the same time recent developments point to the possibility of a large scale communal unrest. The issue of Personal Law and its concommitant demand for an Uniform Civil Code have come alive in the form of a dangerous controversy. The Babari Masjid episode has added to the pungency. Meanwhile, the fact that such eminent persons as Arif Mohammad Khan and Minister of State for Energy and D.P. Madon and Baharul Islam, former judges of the Supreme Court of India, can get together on a platform inclined towards radical reform or a Common Civil Code, whilst angry agitations are sparked off in major Indian cities including a bund in Calcutta, indicates that the battle lines are being drawn for a pretty gory show down.

For a government which happily backed away from its stand on Aligarh Muslim University in the face of prolonged agitation for what was myopically called 'Muslim character', it seems a little surprising that it should allow functionaries and public figures associated with it to tamper with the locks of a Pandora's Box of minority grievances. Undoubtedly there are a number of people amongst the non-Muslim majority as well as certain progressive sections of the Muslim minority who will have India enact and enforce an Uniform Civil Code. But the fact that it is being discussed as a serious possibility is due to an amazing

confusion amongst the ostensible leaders of Muslims in our country.

Graphically, the leaders of the Muslim community can be divided into the following groups: there are the steady pro-establishment leaders who have long been convinced that their mere association with majority leadership will guarantee them and their community a gradual assertion of rights. We shall call these the *Sarkari Seth*. Then comes their antithesis, *Maulavi Ghatara*, firmly rooted in the most archaic and rigid interpretations, not only of the *Quran* and *Hadis* but also obscure rituals of social conduct. They do not always express their opinions publically, that is to say, to an audience of mixed persuasion of faith, but relentlessly speak of a distinction between the *kafirs* (unbelievers) and the *momins* (believers). Inspired by *Maulavi Ghatara* and pushed by their own feeling of rootlessness, there is a category of leaders we shall call *Sheru Khan*, or the militants. These dream of converting India to its golden past of 'Darul Islam', borrowing, in the process, both resources and questionable wisdom of pan-Islamic fundamentalists elsewhere in the world. Floating across the spectrum but constantly attempting to prove themselves liberal, secular and devoted nationalists, are the progressive 'intellectuals' or *Jhamura Akbari*. In their pursuit for intellectual respectability they ride rough shod over Muslim sentiment but raise their voices for the Muslim cause once in a while to preserve an advantage over their counterparts outside the community. There is one more category, that of *Gumchup Shah*, the fellow with the comfortable job who knows that the rest of his community are not so fortunate but also believes that a vociferous protest from him would do them little good but do him a world of harm. And thus these five characters lead the common Muslim citizen, *Shamsher*, in diverse directions and to differing conclusions. The result, of course, is that he follows each a little bit and blames his condition on destiny as in Iqbal's famous poem, *Shikwa*.

The most frightening thesis propounded by any of the five comes from *Sarkari Seth*. It runs thus: "We Muslims are ourselves directly responsible, or as successors are indirectly culpable, for partitioning India in 1947. We, therefore, have abroga-

ted virtually all our original rights as citizens of this land and it is a great virtue of our non-Muslim brethren that we are allowed to live with respect and dignity even if in a little poverty. Our foremost task must be to convince our community that restraint and accommodation are incumbent upon us and our constant endeavour should be to show that we have severed our physical and sentimental links with our Muslim brethren who chose to go to Pakistan." To drive this point home, it is argued further: "If the Akalis procure an independent state of Khalistan would we not be reluctant to entertain any expectations from the residue Sikh population, considering the fact that even at present we look upon the Sikhs with some contempt?"

The most dubious conduct of the five is of *Jhamura Akbari*. When it comes to special claims or preferences for minorities, he prefers to superimpose his superior knowledge and wisdom upon the voice of the people. Thus *Akbari* interfered with Aligarh Muslim University, arguing that a secular country could not possibly entertain a claim for a 'minority character' for AMU. The essential slight of intellect that *Akbari* indulges in is to convert "what is a right of a Muslim" into "what is right for a Muslim". Of course, *Akbari* acquires his *locus* to speak for the Muslims by howling consternation every time there is a riot. The technique simply is to convert Muslim politics into a body-count of corpses, acquire a status of a sympathiser and then to be the willing executioner of the Muslim sentiment. Both *Sarkari Seth* and *Jhamura Akbari* thrive on the *status quo*, quite like the Indian industrial houses did in the era of protectionist trade policies in the early years of Independence. They are both basically parasites and live off the official victuals handed down as a symbolic gesture of secularism. *Jhamura Akbari* is more versatile of the two in being able to take mildly hostile postures on some issues in order to suppress any move to ignore him. But he never rocks the boat. Sometimes government policy is attacked directly and without explanations but more often the public attack is tempered with private asides like: "I am trying to flush out opposition to this move" and "Unless I can attack you, I will have no credibility." The game plans vary in time and occasion. But the rules are otherwise generally the same.

Maulavi Ghatara is an amazing character—loquacious, opinio-

nated, with an eye for the better things in life. He leads a life of his own with dog-earned receipt books and pious pamphlets. There is usually more political acumen inside his closely cropped head than religious wisdom. He keeps discreet channels of communication with Muslim politicians for personal reasons as well as to provide for his flock which can easily stray if not looked after. *Maulavi Ghatara* lives in snatches of oblivion and eminence. From time to time, when elections are at hand or a riot-affected populace is to be pacified, *Maulavi Ghatara* is removed from the mothballs and conducted along red carpets to intervene. No one ever knows how much *Maulavi* matters. But he makes the most of the interlude of eminence before retiring to the cloisters to wait for the next call.

Sheru Khan, though speaking the language of *Maulavi Ghatara*, keeps at some distance from the latter, since power and not salvation is *Sheru Khan*'s quest. He is usually illiterate, ill-equipped to lead a life of respectability. But his demeanor is not crude. Indeed, *Sheru* often surprises his compatriots with an elegant phrase or a correspondingly polite social gesture. Sometimes *Sheru* blames his state in life upon his own short-sightedness. At other times, in frustration, he accuses the system of being unfair and mean. *Sheru* is simple, passionate, emotional, impetuous and foolhardy. But he is also a loner. He cannot and does not operate with a group or a team. At best he joins hands with a coeval to operate as a pair. But he is happiest as a lonesome rogue. *Sheru*, like *Maulavi Ghatara*, appears when there is trouble. But his appearance gets him even smaller rewards than the ones carried home by *Maulavi Ghatara*. In some parts of India, especially the western coastline, *Sheru Khan* has acquired special skills for living dangerously. He lives a life of very difficult occupations like informal trade and estate development. Both involve a heavy reliance on muscle and constant brushes with the law. But *Sheru Khan* can rightly claim to be the object of affection for hundreds of poor Muslims for whom Bhiwandi may come once in a decade but daily dozes of hunger and humiliation are common. They do not look for grandeur and status. They only seek a familiar face, a comforting word and the knowledge that their leader has sufficient power to protect them from the dishonourable inclinations of

man and nature.

Gumchup Shah and *Shamsher* are neighbours except that *Shamsher* has the urge to enquire about his prospects. That may possibly be so because *Shamsher* lives marginally below the standard achieved by *Gumchup* and with gradual advent *Shamsher* would be silenced as well. But whilst the questioning spirit lives, *Shamsher* is a lively and captivated listener and follower. His problem is that he does not know whom to follow. He waits for signals from the government but they are usually confused and contradictory. He makes tentative efforts to disassociate himself with what he thinks are red-herrings—status of AMU and Urdu or, for that matter, even Personal Law. But his imagination and confidence give way after a while. Leaders change their tune and leave him guessing. He returns to symbols. He dreams of a lost glory and looks desperately for ;ibis. Then suddenly he hears of a communal riot and his blood boils. But he breaks his heart because he cannot speak. *Shamsher* has feelings but he doesn't know the language in which he can communicate them. *Shamsher* wants a leader but he does not know how to create one. *Shamsher* just feels the pain and waits.

Chapter Sixteen

MUSLIM LEADERSHIP IN PERSPECTIVE: JADED GENERALS

For a party perturbed with the thought of large-scale depletion of its traditional Muslim vote bank, it seems astounding how easily the Congress lost political initiative to opposition men with far less resources and mobility. As a specific example, efforts of Mr Ibrahim Sulaiman Sait, President of the Indian Union Muslim League, seem to have carried the green standard of Muslim leadership even higher than the semi-intellectual exercises of Mr Syed Shahabuddin, the mercurial Muslim leader of the Janata party, who has fought communal elements in the Congress as well as his own party to keep himself in the arena of Parliamentary politics.

When the Supreme Court of India, in a hearing on the now familiar *Varanasi Graves* case, permitted Mr Sait's intervention petition and granted him time to accomplish a political solution to the *Shia-Sunni* dispute, the Congress, by default, virtually handed over the centre stage of Muslim politics to Mr Sait. Mr Shahabuddin, already in the span of eight years in politics an established rallying point of Muslim opinion, joined hands with Mr Sait in the petition as well as endeavour. Despite an indifferent party, Shahabuddin has the advantage of a virtual *carte blanche* on the matter of minority politics, at least till his party comes to power.

Mr Sait's preliminary success in court underlined the dismal failure of the *Sunni* community as well as the ruling party's state government in Uttar Pradesh to find a statisfactory solution. At no stage did any Congress politician even suggest that he find a solution or offer the services of his party for a settlement that would clearly sort out the controversy and at the same time, leave the Congress in command of respect and support of the Muslim community as a whole. A delegation comprising Congress Minister Khurshid Alam Khan and Col. B.H. Zaidi,

took pains to travel to Varanasi in search of a solution but no official initiative was made at any stage.

Mr Sait was clever. His petition, which incidentally he argued in person, was cleverly worded to assure the entire community, both *Sunnis* and *Shias*, that he was fighting for their welfare and well-being. In his eight-page petition he established that:

1. The Muslims all over the country were disturbed;
2. Something needed to be done in a hurry to reassure them and prevent further dissatisfaction; and
3. The Muslim League was eminently fit to represent this cause and bring this reassurance.

Referring particularly to the *Graves* issue, he said the Muslim community all over the country was apprehensive that the court order to shift the graves, if carried out, would "open a Pandora's Box and shall lead to large-scale removal of graves and desecration of graves all over the country in the name of public interest." Hence he strongly asserted that this apprehension needed to be set at rest. He ended with the *tour de force* that he was intervening because the "Muslim League was a political organisation of Muslim minority in India and aims at striving to safeguard the interests and rights of minorities in general and of Muslim minority in particular."

When the triumphant Mr Sait emerged out of the courtroom with his request granted, one correspondent put the suggestion to him that the finding of a solution by him would translate into tremendous political triumph as well. An associate hurriedly rushed to deny the possibility of political advantage as a motive. But, significantly, Mr Sait only smiled.

Of course nothing constructive was accomplished. The court gradually enhanced the period of time granted. Other developments obscured the graves of Doshipura and the affable Sulaiman Sait went looking after other tension points.

This is not the first time that the Congress has lost the game to the Shahabuddin/Sait duo. The team plunged into the controversy of the Safdarjung Tomb Mosque issue that belied any solution for over six months but was finally solved with a round of applause for them. The issue arose out of the stubborn

efforts of the All India Muslim Majlis-e-Mushawarat to get sanction to pray in the premises of the historical tomb. The Congress government had resolutely refused to budge on the issue partly as a matter of blind principle and probably because Muslim Ministers were too embarrassed to take up the matter. Indeed the embarrassment must have increased tremendously with the appearance of provocative posters on the eve of the handing over of the Kotwali building of the Chandni Chowk Sisganj Gurudwara by Mr Rajiv Gandhi, then AICC(I) General Secretary. The posters carried the legend: *Unke liye chabi, hamare liye tala* (for them the key, for us the lock).

As a form of religious *satyagraha*, by rotation, several dozen Muslim activists converged every week in front of one Muslim Minister's house as well as the 2A, Motilal Nehru Marg office of Mr Gandhi, MP, to say Friday *namaz*. The *masjid bachao* (save the mosques) endeavour was well underway.

Enter Messrs Sait and Shahabuddin, minority general practitioners. In an effort which later angered certain sections of his party, Mr Shahabuddin issued an official Janata party statement. Dated 24 January 1984, it began with the bold headlines: *Do not push the Muslims to the wall. Do not play with their religious feelings. Shahabuddin cautions Indira Gandhi on issue of protected mosques.* The statement continued to say that the Prime Minister's statement at the second meeting of the National Integration Council at New Delhi summarily rejecting Mr Sait's suggestion that Muslims be permitted to offer *namaz* at these protected monuments was "shocking" and showed her "insensitivity to Muslim feelings".

Mr Shahabuddin based his demand on the rationale that mosques taken over the Department of Archaeology were not being maintained properly and were "slowly turning into ruins on account of planned and deliberate negligence". The first part may be true of most monuments in the charge of the Department. But the case begins to sour when fundamental principles are employed with a degree of invective—"No government can, under the guise of protection, nullify the right of Muslims to profess *namaz* in any mosque anywhere or forfeit mosques unless it is determined to trample over the Constitutional guarantees of religious freedom." And then the threat: "Mrs

Gandhi's statement leaves no option for the Muslim community but to forgo the luxury of protection and to demand that their mosques be restored to them."

The entire outrage was about lack of government sanction to pray at the Safdarjung Tomb which, in living memory of Muslims in Delhi, was never used as a mosque! Now, would one be able to argue forcefully that Muslim population on the periphery of the mosque needed it? But, as the sequence of events proved effectively, that became irrelevant.

When Mr Shahabuddin and Mr Sait took up the matter, some Muslim Ministres made efforts to find a solution. But ultimately, it was Mr R. Venkataraman, the then Union Defence Minister, who was instructed to conduct negotiations. This, in itself, raised many a fez cap. Inevitably, the opening of the mosque was quickly converted into a Muslim League triumph as the green party flag, sporting its crescent, was defiantly hoisted on the mosque and some activists showed signs of taking up permanent residence within the building.

Finally, it took the combined efforts of Muslim Ministers and the Shahabuddin/Sait team to defuse the issue and the flag was removed three days later. Mr Sait could well afford to be generous in victory. Another minor legend had been created for the Muslim League while the Congress and its incomprehensible Muslim affairs policy were back in confusion.

Mr Sait has been somewhat of a supporter of Mrs Gandhi and is currently an ally of the Congress. At the same time, he has acquired a stature which has paralysed any independent electoral planning by the Congress party in Kerala. Mr Shahabuddin's antagonism for the party is common knowledge. So is the fact that he tops the hate list of Congress (I) Muslim policy planners and efforts have been made, from time to time, to persuade the Congress (I) Muslim intellectuals to question his credentials and, when possible, directly attack his motives. Few have, however, found the courage or conviction to attack the editor of *Muslim India*, except for Mr Ishtiaque Abidi, former Joint Secretary of the AICC(I), who resorted to belligerent criticism and direct accusation about Mr Shahabuddin's alleged communal tendencies. The fear of Mr Shahabuddin seems to have arisen from the fact that, in one term as Rajya Sabha member, he had been able

to muster an impressive following of Muslim intelligentsia, diverse Muslim pressure groups as well as the national media. He has often been called the "Jinnah of modern times" but the analogy seems somewhat false. Jinnah was an agnostic to say the least, concerned about the Muslims as a social entity; Mr Shahabuddin, though a former Student Federation of India left wing activist for whom Jawaharlal Nehru had to personally intervene to clear for the Indian Foreign Service, is involved in the Muslim cause through his devotion for Islam. Shahabuddin is painstaking and austere. He has a grand strategy for Muslim assertion--that Muslims should not congregate into one party but operate from whichever party they belong to. Muslims everywhere share a common concern and ideology and, therefore, must coordinate their endeavours. He professes to understand the constraints within which Congress Muslim Ministers operate and is fond of repeating that he has never attacked a Muslim Minister for inadequacy. But despite Shahabuddin's considerable intellectual input into his cause, he is not always understood by people other than Muslims. The charge of being 'communal' is made very often against him. He is certainly seen by some of his own partymen as a pretty irritating nuisance. The point may be that he has immersed himself so exclusively in Muslim affairs that the ordinary person thinks of him as being obsessed.

Mr Shahabuddin's ace in political manoeuvres was the cleverly executed joint memorandum of all-party Muslim members of Parliament to Prime Minister Indira Gandhi, in which he actually manipulated Dr Rafiq Zakaria, then Congress (I) member from Maharashtra as well as Deputy Chairman of the Rajya Sabha, into the unenviable position of reading it out. The then Prime Minister was somewhat perplexed. But soon after, Congress (I) Muslim MPs were called into a caucus and categorically told not to associate themselves with opposition propaganda and discreetly encouraged to present their own proposals.

When they did, the proposals were quickly accepted and a special circular was sent out to all government departments in an effort to placate Muslim public opinion. A Special Secretary was also appointed to head a special cell in the Home Ministry in charge of Muslim affairs. Mr Mir Masrulla, the incumbent,

was later transferred to Jammu and Kashmir as Chief Secretary before any substantial achievements could be reported. No evidence is available anywhere to show that the circular had any substantial impact on routine decision-making. But Syed Shahabuddin had made his point.

Of all the Muslim leaders in the opposition, Shahabuddin evokes the strongest of reactions—a saviour to some; a subverter to others. He has generated an incredible public interest in his activities in less than a decade in politics. The fact is that, everything else apart, he seems to be the only Muslim politician who espouses an articulate theory about minorities and makes ceaseless endeavour to apply that to the world of politics around him. In short, his theory is that Muslims have three alternatives in India:

1. To remain indifferent to events;
2. To group together in an exculsive party of their own; and
3. To join political parties most attractive to them.

Of the three he endorses the last. He believes that minority rights are secure only so long as there is a national consensus about them. And that is possible only if Muslims in different parties cooperate on the issue of minorities. But he adds a caveat to this. Things may be different since 1 February 1986 when the Faizabad Sub-Judge gave the controversial order for the reopening of the Babari Masjid. The consistent silence in all parties on this is seen by Shahabuddin as a possible proof of the failure of his theory. The preoccupation with the Hindu vote has upset all calculations of a fine balance. The same might be said about the *Shah Bano* case and the legislation to ensure the precedence of the *Shariat*. Indeed, the Prime Minister may have taken a very bold and foresighted step towards true secularism in the face of obvious resistence, reminiscent of Mrs Gandhi's decision in 1967 to shatter the false belief of her colleagues that a Muslim could not be elected President of India.

If Congress hegemony from Independence to 1977 and once again since 1980 is anything to go by, its Muslim Ministers may at least *prima facie* be taken to be Muslim leaders. In the early

years, Abul Kalam Azad (1947-58) and Rafi Ahmed Kidwai (1947-54) dominated the national scene and it might be confidently said that they were national leaders in their own right. The influence of these leaders has been considerable but no lasting tradition has been able to establish itself for posterity. The next generation leadership of Hafiz Mohammad Ibraham (1958-63) and Humayun Kabir (1958-66) ensured survival and preservation of the symbolic accommodation of Muslim expectation. Mohammad Ali Currim Chagla (1963-67), a brilliant judge, jurist and public statesman, may well be put down as the appropriate emblem of the secular India, the founding fathers had envisaged. By background and training a man of enlightened vision, M.C. Chagla was destined to be alienated, first from his community and then the political establishment which had grasped his brilliance to lend itself credibility on the issue of secularism.

Fakhruddin Ali Ahmed (1966-74) was perhaps the only Muslim Minister to become, for a long period, the undisputed representative of the community. His sagacious loyalty to Mrs Gandhi in the critical Congress split of 1969 gave him the standing and seniority which no other Muslim leader has been able to achieve since the death of Maulana Azad. His loyalty and pre-eminence found recognition in his election as the second Muslim President of India in 1974, almost as a political irony. Though his august position was in no manner as trying as the period in which Giani Zail Singh has faced the unhappy incidents of the Akali agitation, Sant Bhindranwale's virtual declaration of independence and the Operation Bluestar which followed as a regrettable though inevitable consequence of the challenge to Constitutional authority, Fakhruddin Ali Ahmed too lived a lonely prisoner of conscience. The strain of being a helpless figurehead as his own community turned bitter and irreverent literally broke his heart and he left the Rashtrapati Bhavan in state, drawn on a gun carriage which carried the first Muslim President, perhaps more lamented but in more glorious days. It is now established on the corroboration of some persons who are intimately associated with President Fakhruddin Ali Ahmed that he was subjected to deliberate attempts by security agencies to impose a political news quarantine. Of

course the President has a thousand channels of information and President Ahmed was terribly upset about what he had heard. He had an occasion to bring up the matter in a casual manner at a private dinner he hosted for Mrs Gandhi's family. Sanjay Gandhi is reported to have almost rebuked him for suggesting that Muslims felt a special apprehension about the vigorous family planning programme. Mrs Gandhi was herself very moved and is said to have had a private talk with the President thereafter.

After the 1977 debacle of the Congress party, Delhi was buzzing with gossip about a diary which the late President kept. But no one ever produced any such document and gradually speculation died down.

There may be a terrible irony in the recent election success of the United Minority Front (UMF) in Assam. Much of the support which UMF has been able to muster is the vote bank on which Fakhruddin Ali Ahmed rode to Delhi as Maulana Azad's political heir.

Fakhruddin Ali Ahmed died as President of India in 1977 having ceased to be a political figure way back in 1974. In over a decade, despite major political shifts and upheavals, no Muslim minister has been able to walk centre stage in the politics epics of the 1980s. Moinul Haq Chowdhury and Syed Mir Qasim made a brief appearance in the Cabinet. At one stage Mir Qasim was set to become Congress President and was considered a party heavyweight along with Pranab Mukerjee, Kamlapati Tripathi, P. Shiv Shankar et al. But the chemistry went away and he ended up riding piggyback on H.N. Bahuguna into Charan Singh's camp before retreating up the mountains of Kashmir. Mir Qasim has not been heard of in recent months.

The present stalwarts of the Congress party include Z.R. Ansari, Mohsina Kidwai, Khurshid Alam Khan, Abdul Ghafoor and perhaps A.B.A. Ghani Khan Choudhury, with Najma Heptullah just on the fringe. Amongst the younger lot are Ghulam Nabi Azad, Arif Mohammad Khan, with Ahmed Patil and Tariq Anwar waiting in the wings. Further behind but glittering with promise are Shamim Qureshi from Bombay, Imtiaz Khan, Saleem Sherwani, Fazle Masud, Hasan Ahmed, Zafar Ali Naqvi from U.P., and Roshan Baig from Karnataka

(who has left Congress to become a Janata MLA).

Others who have had indifferent innings are Shahnawaz Khan (1971-77), Saiyed Nurul Hasan (1971-77), V.A. Seyid Mohammad (1975-77), C.K. Jaffer Sharief, Mohammed Yunus Saleem and Mohammad Usman Arif. In the states a couple of Muslim Chief Ministers have had brief tenures. A.R. Antulay's was a particularly curious case. Becoming the Chief Minister of Maharashtra was itself a staggering achievement for a Muslim but to have quickly acquired the following which he did was amazing. Muslims cheered him just for being Muslim and happily ignored his transparent devices to appease Maratha sensibility. He went looking for Shivaji's sword, something north Indian Muslims would never have forgiven a Muslim leader for. But Bombay is too preoccupied with commerce to worry about history.

Of the incumbents, Arif Mohammad Khan has had an extraordinarily meteoric ascendancy and, but for a severe set back to his prospects of becoming a popular leader due to his impolitic advocacy on behalf of the *Shah Bano* judgment of the Supreme Court, he was being talked of as "the leader". It is still too early to make anything of a man like Arif. His record thus far leaves a confusing trial of promise and warning. Starting his political career as a student leader and President of the Aligarh Muslim University Students Union in 1973-74, Arif Khan was able to surf to eminence on the crest of a reaction in Aligarh to the 1965 Ordinance making the university a virtual fiefdom of the Central Government. The Urdu agitation and the Personal Law theme were thrown in for good measure..In 1975, as a law student, he opposed the Emergency and found himself detained under preventative detention laws which he himself was to superintend as Minister of State for Home a decade later. Enamoured by the enigmatic politics of Piloo Mody, Arif Khan joined the Janata party and became a Deputy Minister for *Waqfs* in the UP Cabinet. Within months he resigned from the position and from the party on the ground of Janata insensitiveness towards the *Shia-Sunni* problem in Lucknow. Joining Congress (I) as a party Joint Secretary he swiftly outstripped the indigenous talent to become Minister at a remarkably young age.

Now he has made a somewhat confusing exist from the Cabi-

net. The BJP has hailed it as a singular act of conscientious courage. With friends like them Arif hardly needs enemies. But in any case, he has excited great expectations in the national media and amongst the less informed non-Muslims. Arif is unlikely to come forward with a prolific theory of women's rights and it is difficult to imagine how else he plans to live up to the expectations. Arif is believed to be very piqued at the turn of events and has expressed his irritation at being goaded about Muslim reaction. "I have not won on a Muslim platform," he is reported to have said. Once upon a time Sikander Bakht of the BJP and General Shah Nawaz Khan of the Congress expressed similar sentiment and paid a heavy price.

Shah Nawaz Khan was a legendary hero of the freedom movement. As an officer of the Azad Hind Fauj under the enigmatic leader Subhas Chandra Bose, General Shah Nawaz Khan was a romantic figure whose trial in the historic Red Fort figures as a major event in contemporary history. Yet he did not progress beyond the modest rank of Deputy Minister in the government of Independent India. Amongst his political battles was an unpleasant confrontation with Imam Bukhari of the Jama Masjid at the instance of Maulana Asad Madani who was, at one time in the middle seventies, determined to end the heriditary Imamat. The Imam fought like an alley cat even as bullets riddled the walls and gates of the historic mosque. That and the 1977 defeat forced the General into his final retirement.

In his retirement, Shah Nawaz Khan breathed the restless air of living history and made almost a desparate attempt to be noticed in 1984, after waiting four years in wilderness. As *Amir* (head) of the Mulk-O-Millat Bachao Tehrik he wrote to Prime Minister Mrs Indira Gandhi:

> This glorious legacy, Madam, is being callously trampled under-foot. Moradabad, Meerut and Baroda are gaping wounds on its body, calling for serious thinking and determined action. The active involvement of some sections of the government machinery in these patently anti-Muslim actions and the indifference of large sections of society, the failure of political leadership and the apparent helplessness of secular forces have caused frustration and dismay all around, particularly among

the Muslims who are victims of this ruthless violence.
Mrs Gandhi's response to reassure the ageing General was not enough. Once again he wrote to her:

> Madam, for over a quarter century we have seen communalism getting the better of our sense of justice and fairplay, our commitment to secularism. Today we are faced with a situation where the largest and strongest party, the Congress (I), despite its commitment to build a secular society, is exhibiting woeful pusillanimity and timid attitude in meeting this challenge.

Predictably, on the eve of the *satyagraha* threatened by the Tehrik, Government of India assured the leaders of the Tehrik of sympathetic consideration of their demands and announced the formation of a committee consisting of Home Minister P.C. Sethi, Industries Minister N.D. Tiwari, Works and Housing Minister Buta Singh, Minister of State for Railways, C.K. Jaffer Sharief and Begum Abida Ahmed, MP. Equally predictably, nothing more has been heard of the Tehrik. General Shah Nawaz Khan did not get back into active politics and passed away and was given an appropriate funeral befitting a General of Freedom.

Chapter Seventeen

A MESSIAH'S MISCHIEF: NOTIONS OF SECULARISM

Sympathy is a difficult thing to give and accept. Like all noble things it can easily be corrupted by the gravity of the self. So is praise. At least in contemporary India, praise is the deadliest of social evils to watch. It destroys more than it builds.

I was a little surprised one day when a colleague at the Delhi Bar and its past President, P.N. Lekhi, recommended the work of M.R.A. Baig, *The Muslim Dilemma in India,* as an outstanding expose of the Muslim predicament. Apart from the more scholarly works of Abid Husain, Mohammad Mujeeb, Moin Shakir and, more recently, Imtiaz Ahmed, there are only two books which are prominently mentioned in the context of Muslim social study—Baig's being one and Hamid Dalwai's *Secularism and Indian Muslims* being the other. Of those, Baig comes across as a more promising work at first glance because of the author's distinguished career which spanned from being Secretary and speech writer of M.A. Jinnah, to being a nationalist who repudiated his mentor and his dream of a Muslim homeland, to a diplomat who carried the torch of *Panchsheel*, to a social worker.

In the preface, Baig makes a candid disclosure:

> Muslim Indians therefore must either change or sink into oblivion. The choice rests with the next generation. It is later than they think. But who am I to advise them? Since I have already exercised my personal *ijtihad* and observe none of the mandatory tenets and provisions of Islam, it would be sheer hypocrisy on my part to consider myself a Muslim.

Though disclaiming the description of a Muslim, there was a good reason why Baig did not stop right there. He was, after all, born Muslim only in the sense that his parents were Muslim. Yet he was different from those not born of Muslim parents.

That itself was the obvious reason why he undertook to write the book. What else would explain his concept of 'enlightened communalism', a phrase which connotes endeavour to provide assistance by way of job opportunities for one's community. But the endeavour is not in the belief that a right has been violated but in the belief that, as a matter of policy, non-participation of members of a community in the national mainstream will inevitably encourage frustration and separatism.

In a book blistering with propositions, some glaring ones can be extracted:

1. The backwardness of Muslims, all over the world, is probably due to two practices, even though they are not so much in vogue today. First, the practice of mortgaging the mind to the Imam, and second, the practice of pneumonic memory which attributes great virtue to knowing by heart lengthy passages in Arabic.
2. Because Muslims, ideologically, should have no country, they have in compensation an excessive sense of community. This characteristic effectively bars their assimilation in non-Muslim countries and inhibits a practising Muslim being either an internationalist, nationalist or humanist. The Muslim that Islam makes is a transnational communalist, at home only in Muslim majority countries.
3. Jinnah, an overt agnostic, if not atheist, shaped communalism. He was not shaped by it.
4. The 'identity' complex with its retaining wall of Urdu and Personal Law is still cherished by Muslim Indians. But whereas formerly it led logically to Pakistan, no such culmination is now possible.
5. By their very nature religion and nationalism cannot go together except in Muslim majority countries where no conflict between them can arise.
6. Indian government's failure to legislate reform for Muslims gives credence to the 'separate identity' thesis.
7. Due to an inferiority complex, it is easy for Muslims to imagine communalism even where none exists. It also serves as an alibi to explain failures for which the Muslims may themselves be to blame.

8. It is understandable that Muslims should object to Aryan and Dravidian names of Hindu deities, but there can be no objections to such names as Shanti or Anand.

9. There are innumerable Hindus imbued with true humanism and with the moral courage to oppose Hindu communalism. But their counterparts among Muslims can be counted on one's fingers and they are usually condemned as anti-Muslim.

There is similarly a lot more in Baig's loose discourse which, coincidentally, overlaps with the attitude of mind to be found in what may broadly speaking be identified as the Jan Sangh approach towards Muslims. Balraj Madhok, in his book *Indianisation* perhaps did not use an equally sympathetic tone of an 'enlightened communalist' but diagnosed the malady in terms similar to those suggested by Baig and what is more surprising, even ventured to propose solutions which appeal to Baig. In fact, at one point Baig even claims a thirty-year lead over Madhok in coining the slogan 'Think Indian' for which the latter has received accolades and condemnation alike. 'Think Indian' is unexpectional and virtuous but we must know that, wittingly or unwittingly, it does not give way to 'Think Hindu'. Strange, is it not, that India should be called 'Bharat' and not 'Hindustan' in these treatises?

But much of what Baig builds his thesis of the Muslim dilemma on, that Indian Muslims are in the unenviable position of being unable to be good citizens and practising Muslims simultaneously, is refuted by his own 'enlightened communalism'. The voice of the internal contradiction is obvious in the text:

It may be good to explain here why this author, as a practitioner of 'enlightened communalism,' has actively interested himself in finding employment for deserving Muslims. His purpose is more psychological and sociological than economic. Without underestimating the latter aspect, his purpose is not so much to find Muslims jobs as to find them opportunities to participate in creative national activities. Non-participation, so easily interpreted as rejection, breeds frustration which is the most potent cause for communalism. Conversely,

only when Muslims feel that they are getting a fair deal and have the same opportunities as non-Muslims will they shed their religio-cultural cohesion for functional collectivity, the first step towards humanism. Rubbing shoulders also rubs away many complexes, inhibitions and prejudices. There are many employers who claim to be secular but who never think of putting this virtue into practice and theoretical secularism has little value if it does not lead to applied secularism. Only recently a highly qualified young Muslim who was recommended by this author to a premier industrial firm in Delhi was frankly told that it was not the policy of the firm to employ Muslims. The reason was also given, and it was revealing. He was told that since the labour force was Hindu, the security of an odd Muslim would be too much of a problem. He is, however, now employed in the Income Tax Department, but it will be long before he will be able to get over his traumatic experience.

Nothing impedes the spread of humanism among Muslims more than the ease with which some humanist Jekylls turn into communal Hydes when their humanism is put to test. Against the background of a persecution complex, set-backs, however deserved, are remembered whereas favours are easily forgotten. In consequence of such conditions Muslims fall between two stools, and it is very difficult for Muslims to give each other a helping hand. If a Hindu employs another Hindu, it is perfectly normal. But if a Muslim employs the most qualified fellow Muslim it is immediately considered as communalism, and even a Hindu employs the same Muslim, it is secular.

This double standard, in fact operates in all spheres. Recently in Parliament tributes were paid to some former members who had recently died, including Shaukatullah Ansari. The Hindu members, who were probably elected on caste basis, had, it was said, great Parliamentary gifts and had contributed greatly to the debates. Shaukatullah Ansari alone, apparently, had a 'secular' approach! Similarly, on the deaths of Rajendra Prasad, Lal Bahadur Shastri and Rajagopalachari, eulogies were paid to their patriotism and intellectual capacities, but the best that could be said for

Zakir Husain was that he was the embodiment of 'secular' culture. Though there is very much that points to the contrary, all Hindus apparently are so secular that it requires no comment. Humanists may be pardoned if they find this puzzling. The 'two-identity theory' still exists in full force, and if it is rare that a Muslim forgets that he is a Muslim, it is equally rare that a Muslim is allowed to forget that he is a Muslim.

The fact is that if Muslims are backward educationally and fail to find employment, it is largely due to their own fault. Few prepare themselves for the employment possibilities that exist, yet they feel that it is for anti-Muslim reasons that they are unemployed. Urdu, for instance, is of the minimum functional value today. The employer wants employees who will speak the same language as the other employees, and there is little chance for employment today without fluency in Hindi or in any one of the other regional languages. In fact, the Muslim should be to the Hindu what, in the past, the Kayasth was to the Mughal.

What is wrong with the approach of persons like Baig? To begin with, being by admission only 'notional' Muslims they do not have the confidence of the Muslim community. And there is no special *locus standi* except that of any other person. But the use made of their works and their name by persons unfriendly to Muslims places a special responsibility on them. How do they discharge this onus? By resorting to half-baked theories of sociological behaviour with next to no emphirical study combined with an educated minority's arrogance of believing that the burden of the ignorant majority rests squarely on their shoulders. Every single argument put forward by Baig is easily demolished. For instance, can it be said that Richard Burton was ignorant about Shakespeare because he could recite most of it by heart? Have Jews lost the intense feeling of identity by gaining Israel? Can it be said that an overt concern for Urdu gave birth to Pakistan when Jinnah did not speak the language?

But it is not even necessary to refute Baig's arguments. One simply has to demand an elucidation of the term 'Indianness'.

India lives and breathes in myriad forms—Kashmir's picturesque mountains and vales, the tropical forests of Assam, the arid sands of Rajasthan, the paddy fields and water ways of Kerala. We speak more languages than most continents and our cultural diversity beats the flora and fauna of Africa. We feel ourselves to be Punjabi, Assamese, Bihari, Maratha and Kannadiga, et al. But despite every thing some deep echo in the heart whispers *Sare Jehan Se Achcha, Hindostan Hamara*, the words which overwhelmed Rakesh Sharma in outer space. But the romance and reality of being Indian cannot be captured in glib phrases of unitary systems. Any attempt to impose uniformity is the best guarantee of instigating separatist movements in the country. After all, why doesn't the 'secular' Indian mind learn from the experience of Black Americans—their assertion in different ways such as by Eliza Mohammad and Martin Luther King or just the way of the Harlem gangster have never led the American establishment to think of them as racial or communal bigots. Nor, for that matter, is Asian solidarity treated as a racial challenge in England. Indeed, nowhere in the civilized world is the preoccupation of a minority to preserve its culture treated in the same manner as the mildest move by Indian Muslims just to be left alone. Surely there must be some beautiful things in Islam and some things about Indian Muslims which deserve emulation? But men like Baig never speak of them.

Hamid Dalwai's main theme finds expression in a collection of papers entitled *Muslim Politics in Secular India* and *Secularism and Indian Muslims*. Dalwai saw himself as the harbinger of a renaissance which Muslim society had sadly missed. Strangely enough, for a person devoted to a concept of 'nationalist' analysis of social action, Dalwai commits the ultimate sin of periodically slipping from the nationalist level to the pan-Islamic plane. When he speaks of the inherent inadequacies of Muslim society his finger points at the history of Islam and not simply the actual social contours of Indian Muslims. But when he projects his programme for reform he quietly descends to the specifics of Indian polity.

Professor A.B. Shah, who worked closely with Dalwai in the Indian Secular Forum, has explained the celebrated reformist's thesis thus: Muslim society has never had a renaissance in its

entire history. Partially for that reason and partially due to other historical reasons the Muslim mind is unable to separate religion from politics, collective wisdom from individual analysis. This explains the "separatist" tendencies of Muslims which "obstructed" the path of Indian freedom and ultimately diverted it to Partition. Subsequently, the prevalence of this attitude has confined Indian Muslims to their backwardness and poverty. This, in turn, has led Indian Muslims to accuse the state of indulging in discrimination and thus retarded the growth of national integration.

There couldn't be a more closely packed thesis of spurious ideas. But the interesting thing is that much as A.B. Shah hoped Dalwai would capture the imagination of the young Muslim, the tone of Dalwai suggests that he is not speaking to Muslims at all. His audience seems to be largely of non-Muslims for whom the gentle message is of patience: Do not be irked by Muslims. They are living in a fool's paradise. Give substance and patronage to Muslims who are determined to change Muslim society. Thus is the thesis. Its amplification comes in Dalwai's own words:

> I agree with the communalist Hindu's view that Pakistan was not the last demand of the Muslims of this sub-continent. Even today, both among Indian Muslims and among the rulers of Pakistan, there are influential groups whose last demand would be the conversion of the whole of India to Islam.

The strategy for reformation is also spelt out:

> My appeal is addressed to (understanding, optimistic) Hindus. I urge them to accept the facts of the situation first: there is no class of thoroughly secular Muslims in India today. At the same time, the idea of a common Indian nationality requires that Muslim society be integrated in the fabric of a secular Indian society. The only way in which this can be achieved is by first creating a small class of modern, liberal and secular Muslims.

The test of being secular, liberal and modern is reflected in

Dalwai's choice of Mr Sadiq in Kashmir "making sincere and systematic efforts to free Kashmiri Muslims from the hold that Sheikh Abdullah has on the minds" (of Muslims) and of Dr Rafiq Zakaria in Maharashtra for "making sincere efforts to propogate family planning among Indian Muslims." Apparently that is only a beginning. The ultimate test of allegiance to secularism is to expiate the "sins of Aurangzeb". Mr Dalwai's India must be limited to Maharashtra and his vision to that of Shiv Sena: There is no perceptible difference between Jinnah and Sir Syed Ahmed. Badshah Khan is parochial. A nationalist Muslim is a communalist Muslim since while Jinnah wanted Pakistan, the nationalist wants all of India. Dalwai's world view was born in metropolitan Maharashtra and seems to have imbibed most of its characteristics. The best way to clear slums is to use a bulldozer! Dalwai's admitted intention is to "subject the Indian Muslims to several shocks which history has spared them." But he needs a repressive majority to administer the shocks. Dalwai was convinced that "Muslims would be left with one stark alternative, to perish if they did not change." Would Mr Dalwai look to the majority for this service as well?

One word must be said of the role of religion in politics. Dalwai or any other person has not satisfactorily attempted to show that religion is *per se* inimical to healthy politics. It may be that several times in modern history religion or pseudo religious fervour has been used to usurp political power. But just as a prostitute does not automatically condemn the role of sex in human relationships, misuse of religion cannot make religion taboo in legislatures and the seat of government. In order to exclude religion at least one of two propositions will have to be established:

1. That religion is an unpleasant human condition which has no place in planned human endeavour;
2. That religion is irrelevent to our lives.

If this is not possible the only alternative is to provide a manifesto so appealing and spell binding that the toxic impact of religion wears off. Those against religion cannot hope to win the argument by embarrassing their opponents, because their

opponents are not just leaders, they are masses. It would be very unfair to dismiss the beliefs of the masses as an ignorant person's conviction. Baig, Chagla and Dalwai were, most of their careers, treated with amused contempt by Muslims. As a lawyer Chagla was, of course, among the greats but in politics a very respected Muslim leader described him to Mrs Gandhi as a man who "costs you a hundred enemies each time he opens his mouth".

It may not be out of place to rely on the perception of Asghar Ali Engineer, applauded by some and condemned by others to be a 'secular' Muslim:

> Whatever the actual meaning of secularism, we have to interpret it in keeping with our religio-cultural reality. Although it is nearer the true spirit of secularism to maintain equal distance from all religions, it would be nearer our ethos to interpret it as equal respect for all religions and it is in this latter sense that secularism comes much nearer the *Quranic* spirit.
>
> There is yet another aspect which has to be borne in mind. A society consists of people whereas a country consists of people as well as a state. Secularism, as we pointed out, has two aspects: equal distance from all religions and equal respect for all religions. Now it would be in the true interest of communal harmony if the state keeps equal distance from all religions and people show equal respect to all. All our problems stem from the fact that neither the state maintains equal distance from all religions nor do our people show equal respect for all.

The problem calls for introspection, not allegation. The problem calls for faith, not fanaticism.

Chapter Eighteen

TILTED SCALES: JUDGING ISLAM

Justice Khastgir may never have an opportunity to explain what was on her mind when she issued notice on a writ petition of one Chandumal Chopra challenging the status of the *Quran* and praying for a ban on all copies of the holy book. But explanations or no explanations, jurisprudence will never be able to find a parallel to the Calcutta High Court's amazing response to such a difficult and dangerous proposition. What English judges even today would not dream of entertaining became an arguable case for an Indian judge. Fortunately Justice Bimal Chandra Basak, who dismissed the matter after the hue and cry forced Government of India to rush the Attorney General to Calcutta and Justice Khastgir had expressed her inability to proceed with the matter, was quick to see the immense scope for mischief in the petition. He held that "the action of the petitioners may be said to have attempted to promote, on the grounds of religion, disharmony or feelings of enmity, hatred or illwill between different religions." Thus the hunter became the hunted.

The writ against the *Quran* was not an isolated incident of attempts by persons and groups inimical to Islam and Indian Muslims. In the Supreme Court, the *Shehnaz Shaik* matter is expected to shake the foundations of *Shariat,* if the self-opinionated pronouncements of the petitioner and the lawyers who have extended their services to her are anything to go by. A plain reading of the pleadings indicates that essentially there are two aspects of the petition—a personal domestic dispute and a general position on the validity of the separate systems of Personal Law. *Shah Bano* was only the tip of the iceberg.

Legislative intent did not deter petitioners in the past, nor would the government's final position on *Shah Bano* convince detractors of Islam and Muslim Personal Law to dissipate their fervour and energies elsewhere. Only a clear pronouncement from the judiciary that these battles cannot be fought in courts

will put an end to the provocative litigation. The judiciary too may have to take a fresh look at its role in litigation strategy of litigants involved in the precarious tussle of minority rights and majority perferences—whether it is the Muslim minority and non-Muslim majority or it is the majority of Muslim masses and the minority of reformists! There might be a lesson in the fact that even in the matter of maintenance, Justice Krishna Iyer's judgment stood undisturbed for almost a decade but former Chief Justice Chandrachud's judicial pronouncement fell in less than a year.

Of course Muslims do not always come reluctantly to court. From that point of view there might not be much substance in the claim that courts have no business at all to adjudicate upon their religious disputes. In the *Shia-Sunni* feud over graves in Doshipura, Varanasi, in *Gulam Abbas* v *State of UP* (decided by Justice V.D. Tulzapurkar, D.A. Desai and A.P. Sen) Muslims themselves conceded to the Supreme Court jurisdiction it arguably does not have, and which it might have been well advised not to seek. An year-and-a-half after the preemptory directions by the Court the problem is no closer to solution. A report on the matter by the correspondent of *The Telegraph* entitled "A *Shia-Sunni* feud that refuses to die", summed up the story thus:

> The *mohalla* of Doshipura in Varanasi is tense. The issue involved is an order given on 23 September 1983 by the Supreme Court that two graves on a certain plot of land are to be shifted from one side to the other side so that a distinct line of demarcation may be drawn between areas which the two sects of Muslims, *Shias* and *Sunnis*, use for religious ceremonies. The ultimate aim is to bring to an end a century old feud which has become more violent by the year.
>
> The Supreme Court has argued that such a move would be both in the interest of maintaining public order as well as protecting the rights of the minority community in the area, which happens to be the *Shias*. At the same time, such a move would not be violative of the Fundamental Rights of the *Sunnis* to practise their religious ceremonies. The *Sunnis* have contended otherwise. They have made their displeasure at such

a move clear to the extent that, even six months after the Court's order, the graves are yet to be shifted.

The report written in March 1984 goes on to say:

It must be recalled, at this point, that the initial issue—which formed the basis of a body of legal proceedings starting way back in 1878 and on up to 1978—was not whether the graves should be shifted. Petition and counter petition had urged the courts either to establish who had rights over the land on which the controversial graves are situated or to urge for rights of *Shia* Muslims to perform religious ceremonies in the area without interference from the *Sunnis* or the police or to appeal for protection in performing these ceremonies.

It must also be recalled that the suggestion to shift a grave had come up once before, albiet under different circumstances. In 1933, ruling in a suit brought by the erstwhile Maharaja of Benares urging removal of the graves which had suddenly come up on his property, the subordinate judge, Justice Kanhaiya Lal Nagar, had, on appreciation of oral and documentary evidence held: The plot in question was not a graveyard but that between 1929 and 1931 attempts had been made by the *Sunni* Muslims to "manufacture and fabricate" evidence indicating that it was a graveyard, and that Sunni Muslims had acquired no customary rights in the matter of burial of their dead over the plot in question. By permanent injunction, he restrained the *Sunni* Muslims from using the plot in future as a burial ground.

However, as regard the prayer for actual removal of the graves, he took the view that it would be "a bit improper that the soul of the dead be stirred."

Why, after all these years, has the Supreme Court mooted that very question? In its recent order of 23 September 1983, the Supreme Court Justice V.D. Tulzapurkar, sitting with Justice A.P. Sen and Justice D.A. Desai, explained that the suggestion had been mooted "not with a view to hurt the sentiments of *Sunni* Muslims but purely for the purpose of finding out some permanent solution to this perennial conflict between the two communities and to ensure smooth

> and peaceful performance of their religious ceremonies and functions in future, in an atmosphere of cordiality and amity between them.

The report later pointed out that the *Sunnis* had raised two main objections to the suggestion:

> That it had not only hurt their sentiments but was destructive of their Fundamental Rights and fraught with dangerous consequences, and that the suggestion was, in any event, outside the jurisdiction of the Court and the scope of the proceedings before it.

The Court rejected these objections as having "no substance". It ruled that the suggestion could not be regarded as destructive of any Fundamental Rights of *Sunnis*. Articles 25 and 26 of the Constitution undoubtedly guaranteed to all persons freedom of conscience and free profession, practice and propagation of religion and to every religious denomination or any section thereof freedom to manage its own affairs in matter of religion. But, as the report explains, both these Fundamental Rights had been expressedly made subject to public order, morality and health:

> In other words, the exercise of these Fundamental Rights was not absolute and must yield to maintenance of public order.
>
> It (the judgment) further made clear that if the Court found the implementation of the suggestion to be "eminently fit" in the interest of maintenance of public order, consent of either party would be "immaterial".
>
> However, in what appears to be an attempt to soften the blow, the Court added: 'The impugned suggestion merely seeks to shift these two graves from their present location to the southern side of the grave of Maulana Hakim Badruddin. If taken in a proper spirit it would, in a sense, amount to respecting the sentiments of the *Sunni* Muslims, for (after the shifting) ...the *Chaddar* function and recitation of *Fathia* could be undertaken by them at all the graves instead of only at the grave of the Maulana.'

The Court held that the ecclesiastical edict or right not to disturb an interred corpse was, anyway, not absolute, as was clear from Section 176(3) of the CrPC which permitted its exhumation for the purpose of crime detection. This provision was applicable to all, irrespective of the Personal Law governing the dead.

But even given this right, the Court found the case of the *Sunnis* not strong even according to *Shariat* law. To counter the argument that the move would be "un-Islamic and contrary to the *Quran*" the Court took up three lines of reasoning:

First, it made reference to one of the *fatwas* relied upon by *Sunni* Muslims which said that "unnecessary shifting of graves was not permissible". The Court took this edict to clearly imply that it may become necessary to shift the graves in certain situations. Exigencies of public order would surely provide the requisite situation, the Court said. (Counsel for the *Sunnis* was, incidentally, not able to point out anything in the *Quran* which prohibited shifting of graves. On the other hand, Mr Asoke Sen, appearing for the *Shias*, categorically stated that there was no text in *Quran* which prohibited removal or shifting of graves. He said his clients did not regard such an act as un-Islamic or contrary to the *Quran*).

Secondly, the Court took up the testimony of Maulana Abdul Salam Nomani, the Pesh Imam of Gyan-Vapi, Varanasi who told the Divisional Commissioner that a grave could never be shifted except only in circumstances when the graves were dug on land belonging to others and when they were set up illegally on others' land. To dismiss this, the Court quoted an earlier order that had held that the two graves had, indeed, come up on the land of the erstwhile Maharaja of Benares unauthorisedly and illegally in contravention of an earlier court injunction.

In the third instance, the Court recalled two historical cases of such removal—the grave of Mumtaz Mahal was removed from Burhanpur and brought to the Taj Mahal at Agra and the grave of Jehangir was removed from Kashmir and taken to Lahore.

> In the process of the Court's decision it became clear that it found the stance of the *Sunni* Muslims to be unreasonable. It pointed out that "such a great concern about preserving their fundamental rights under Articles 25 and 26 and meticulous anxiety to have least interference with their religious practice of respecting the dead sounds ironical when the petitioners, who constitute the majority sect of *Sunnis* of Varanasi, did their best during the hearing of the main writ of 1978 to defeat and deny similar rights...to the *Shias*, who constitute a small minority."

The judgment of the Court did not convince Justice M.H. Beg (former Chief Justice of India and at present Chairman of the Minorities Commission). Apart from raising queries about the Court's jurisdiction to interfere under Article 32 writ jurisdiction, Mr Beg, in his opinion published in the *Sixth Annual Report of the Minorities Commission*, cited the judgment of Sulaiman, CJ in a Division V Bench decision of the Allahabad High Court, in *Nazira* v *Sukhdarashan Lal* (1936) that an owner who allows a corpse to be buried on his land could be persumed to dedicate and concentrate the burial ground itself for this use and that the corpse cannot be dug up from there in the case of an old grave. This has been the general law of the land. The Court may have been influenced by the fact that *Shias* have a system of temporary burial to accommodate their desire to be buried in Karbala in Iraq. Justice Beg proceeded to state:

> The needs of law and order can best be understood by those who are in charge of maintaining it locally rather than by a court sitting far away from the actual spot where a dispute over graves exists. Indeed, if any one asks for the disturbance of a grave which should not, according to the religion of everyone of the disputants, be disturbed at all, even the interests of law and order, both in the present and in future, may require that no such order be passed. It is certainly not clear to me how and why such an order was passed either on the facts of the case or the law placed before the Court. I apprehend that neither of these were properly placed before the Court, which could, therefore, not reach a very satis-

factory conclusion on this case even from the limited point of view of law and order.

In 1958 *Mohammed Hanif Qureshi* v *State of Bihar* was decided by the Supreme Court on the issue of ban on cow-slaughter. The issue has been important to Muslims not because they eat beef or because, as it was argued, the ritual of religious sacrifice entails the slaughtering of bovine cattle. It was possible to place protection of the cow and its progeny on legitimate respect for religious sentiments. But the Court, presumably treating sentiment as inadmissible, preferred to rely entirely on Article 48 of the Constitution which provides, "The State shall endeavour to organise agriculture and animal husbandary on modern and scientific lines and shall, in particular, take steps for preserving and prohibiting the slaughter of cows and calves and other milch and draught cattle."

The Court held that there was no conflict in different parts of the Article on the basis that the part following "in particular" recommends protection confined only to cows and calves and to those animals which are presently or potentially capable of yielding milk or of doing work as draught cattle but does not, from the very nature of the purpose for which it is obviously recommended, extend to cattle which at one time were milch or draught cattle but which have ceased to be such.

The test was basically of 'utility'. But gradually as other states began to pass legislation it was complemented by the test of 'age' or indeed totally purported to be replaced by that test. In subsequent cases the Supreme Court attempted to use the age criterion within reasonable limits. Therefore the age of 20 years was considered unreasonable restriction and reduced to the age of 15 years. But that has virtually banished the utility test. Much of the logic of *Mohd. Hanif Qureshi* has become redundant in the three decades since the judgment was pronounced. In fact in a recent case of *Haji Usmanbhai Hasanbhai* v *State of Gujarat* before the Constitutional Bench of the Supreme Court some of the propositions taken for granted were put to strict proof by petitioner's counsel. The Court handed down judgment that simply followed *Mohd. Hanif Qureshi* and noted the fact that in the intervening years since that judgment improve-

ment in vetenary services entailed greater longevity and usefulness for a longer period. The Court hinted at public sentiment as a relevant consideration but ignored almost all the arguments made at the Bar. The petitioner had argued that protection of the cow could be on religious grounds or scientific grounds. If the basis was religious, counsel stated, there would be no further case to press. But if the ground was made out to be objective and scientific it could be assailed. The fundamental precept of good breeding involves culling or elimination of inefficient or weak specimens. The destruction of existing stock provides incentive for breeding fresh, improved stock. As to draught cattle, there was clear evidence of automobile revolution in rural India. The demand for fertilizer is being met by new petrochemical units. The argument that animals remain fit for service for a period of about 15 years was easily met by the reply that once an animal crosses its peak, say at 10 years, there is no reason to continue to use it for diminishing returns, till it can be said to be 'useless'! This is a powerful argument in view of the easy availability of replacement stock. At one stage one of the judges quipped: "We are also old. Why do you continue to suffer us?" Counsel could not resist the counterquip: "Intellectual abilities! Your wisdom grows with age. But bovines are different."

If the courts could not understand the butcher and the farmer, their record with the intellectuals does not exactly excite. In *Azeez Basha* v *Union of India* the Supreme Court interpreted Article 30(1) of the Constitution in such a manner as to hold that Aligarh Muslim University was not a minority institution. In a remarkable exercise the Court interpreted the word 'establish' to mean 'to bring into existence'. But since the Aligarh University, when it came into existence in 1920 was established by the United Legislature by the Aligarh University Act, 1920 it could not be said that the University was 'established' by Muslims. It followed that the minority had no right to 'administer' the University without state interference.

Nothing has caused greater concern than the recent judgment of the Faizabad Sub-Judge in what is known as the *Babari Masjid* or the *Ram Janambhoomi* case. We say earlier that religious sentiment has not been given its due recognition in our juris-

prudence even though it plays a pivotal role in our daily lives and in our public institutions, especially those associated with politics. This artificial, make belief world devoid of religion can easily lead us to take positions that fly in the face of reality. That may well have happened in Faizabad. Even the Supreme Court failed to notice this crucial dichotomy in the famous *Hukumnama* case where it endorsed the view that any use of religion in an election campaign would lead to the election being set aside. But who does not know how elections are conducted and the prevailing wisdom on how to win elections. In any case, can it be fair that we purport to totally exclude from election process the single most important aspect of our lives? One might wish to distinguish use of religion to enhance one's appeal from the use of religion to prejudice the case of the opponent. But one cannot simply say that religion is irrelevant.

The *Babari Masjid* case may well become a test case of how courts can tackle the use and abuse of religion. It might also be the test of true secularism. Upon its result may dependent a lot more than who worships where. Just in Uttar Pradesh and Gujarat there are about fifty similar disputed mosques. For once the floodgates argument familiar to lawyers may be in point.

Chapter Nineteen

DON QUIXOTE RIDES AGAIN: SHOURIE'S SHARIAT

Arun Shourie has battled with windmills and wingbags for almost a decade now since he began writing brilliant critiques of the Establishment. *Shah Bano* has come very timely to allow him to spread his wings into the field of Islam, a subject on which he is believed to have done considerable research since withdrawing from the *Indian Express*, the seat of his first appearance as a cult figure. A meticulous advocate of his briefs, Arun Shourie excels in presenting his subject with a lethal combination of earnestness and selective research. The righteousness of his pronouncements does the initial softening of opponents. Packs of 'investigative' information then mop up the demoralised resistance. Arun Shourie may not be what he used to be a few years ago. But his punches still sting.

The Shariat, a three-part series published recently in *The Illustrated Weekly of India* in response to *Shah Bano*, takes the que from orthodox Muslim priests and proceeds to argue somewhat abrasively that all of the *Shariat* may not be divinely sanctioned and, if so, it must submit to the scrutiny of rationalism. But Shourie has either completely missed the entire point of the *Shah Bano* controversy or else has chosen an aggressive diversion because he has yet to find plausible arguments to answer the actual case. *Shah Bano* in essence was not about the *Shariat*, though both Chief Justice Y.V. Chandrachud, who wrote the judgment, and the vociferous protestors have assumed that the *Shariat* is on the firing line. In fact *Shah Bano* is about Indian Muslims, an identifiable group or community with certain shared values and cultural attributes, and their reaction to the manner of a decision about their lives. That indeed is also what inspires Shourie—group assertion rather than the actual merits of the controversy. As to the *Shariat*, despite Shourie's profound grappling with a complex matter which has taxed the

best minds for centuries, it is not possible to accept that he has found the magic answers. But it is indeed not relevant whether Shourie accepts *Shariat* as divine or not. He must come to grips with a vast multitude of Muslims who accept it to be binding. Normative systems cannot be understood without stepping into the shoes of the subject. And an external invasion to disrupt the system of norms would be justifiably resisted.

In the circumstances, Shourie might have been better off writing a trilogy on the implausibility of God. After all is it not quite simple that if there is God there is no reason to believe that he could not have ensured the accurate preservation of his edicts, no matter that they were recorded on parchment, dried leaves or bones of goats and camels? But this exercise is too philosophical for a pragmatic person like Shourie. He is interested in ensuring that "each of us should also see that the best way to guarantee our interests—of each of us as individuals and of all of us together—is not by clutching on to the figleaf of separatism, but of working together to strengthen the institutions of a modern, secular state."

Shourie misses the point that to argue for justice for each individual does not automatically entail uniformity; that diversity and separatism are distinguishable; that a minority has an understandable disadvantage in the process of assimilation. The last proposition is substantiated by Shourie's own formulation of the first of the three points of secular approach:

> Under our Constitution, by the very nature of our state. no religious or other group has any inherent or perpetual right to insist that it will be governed by laws different from laws that apply to the generality of citizens.

That gives a clear edge to a majority. At the same time the question of inviolability of Personal Law is a Hard Case. The correct decision in it is not as simple as Shourie thinks. After all Articles 25 and 26 of the Constitution must mean something.

The third point formulated by Shourie anticipates criticism about his interest in Islam:

> Hinduism, Islam and all the others—are equally the common

> heritage of each one of us. Each of us, therefore, has the fullest right and the duty to examine, to debate, to argue the adoption or reform of any one and all of the traditions. And each of us must exercise this right and discharge this obligation without the slightest trace of self consciousness of being a Muslim or a Hindu by birth or something else.... "You better write a critique of Hindu Personal Law also," a friend counsels me. "Otherwise you will be accused of being communal." But that precisely is the kind of self-consciousness that we must rid ourselves of. A parallel paper can certainly be written about Hindu Personal Law. And the occasion for writing it will arise when Hindus start saying that modern, secular laws have not been applied to them....

By that, of course, one gathers Shourie has never perceived problems amongst Hindus. But how is it that his rationalism and training in economics does not tell him that the case for ban on cow slaughter is squarely in point? Not only do Hindus insist that they hold the cow and its progeny as sacred but, in addition, insist that none else should be allowed to annihilate them even for economic necessity. It would be absurd, if not madness, for Muslims to insist that they have a right to slaughter bovine creatures irrespective of what their Hindu brethren feel. Beef does not contribute, in any appreciable way, to the Muslim sense of identity and well being. But a cow means a lot to Hindus today, whatever historical evidence may be available to show that Hinduism does not prohibit the slaughter of bovine animals. For a Muslim to show a gesture of accommodation for Hindu sentiment is the essence of social and national harmony. When Dr Karan Singh raised a point of order in Parliament on the issue of whether beef was being served in ITDC (a Government of India undertaking) hotels and promptly all hotels were instructed to delete the word 'beef' from their menu cards even though it mean 'buffalo meat', there was no corresponding demand that the state sector hotels should not serve *haram* flesh of swine.

There is nothing in policy or principle of a secular state which justifies the ban on cow slaughter. There has been constant pressure to enhance the restrictive provisions to include

bulls and bullocks as well as to introduce the ban in West Bengal and Kerala where Marxist governments have both resisted it. But Arun Shourie or others have not found the inspiration to argue a brief against it. Nor have they argued against the Supreme Court's verdict on restitution of conjugal rights or indeed the heavy emphasis in modern Hindu divorce law on sexual offences or deviant conduct.

Speaking of 'common heritage', surely the plight of a divorced Muslim woman is of no greater urgency than the plight of a Muslim man who cannot get a job to feed his wife? We should not get lost in either the lofty motives of Section 125 of the Criminal Procedure Code or the esoteric disputations of priests. The problem of Muslims is a human and a political problem and unless one is prepared to perceive it and to contribute towards its alleviation, the notion of common heritage is a subtle but devious instrument to do what others have done more crudely—manoeuvre Muslims into a preconceived world view in complete disregard of Muslim sentiment.

But to return to Shourie's argument. He believes that five propositions provide the foundation of the 'hands off' argument of Muslims. These may be reduced to three in effect:

1. Every bit of Muslim law is based on the *Quran* and *Sunna* (Prophet's practice) and, therefore, sacrosanct as well as immune from amendment by human agencies;
2. Islamic law is complete and perfect and requires no amplification;
3. It is a seamless object and certainly not susceptible to piece meal acceptance.

These propositions are answered by Shourie thus:

1. *Shariat* is made up of man-made propositions as much as divine revelations;
2. It bears patently a stamp of the time, place and situation of its origin;
3. It has been clearly outdated by scientific advances in the fields of cosmology, medicine and law and, therefore, there is no reason why it should not be considered equally outdated

in matters of personal relations;

4. If one considers it binding as a whole, what of provisions such as those in *jihad*?

5. Its concepts are obviously rooted in seventh century Arabia.

The important thing about Arun Shourie's attack on the *Shariat* is that he fails to distinguish two aspects. The argument is designed to appeal to the rational average citizen, both Muslim and non-Muslim. But the argument is addressed against a view that is seldom applied by Muslims in daily life, however contrary their propositions may sound when they are forced into an intellectual duel with Arun Shourie. The best example to refute Shourie's thesis concerns what is ostensibly his best argument. If *Shariat* is divine and binding in totality, it is incumbent upon a Muslim to engage in constant *jehad* and subjugate or annihilate all non-believers. Quite apart from the fact that *jehad* can be interpreted as a physical battle as well as *jehad-ul-nafs* or the battle of minds, how is it that *jehad* has never posed a problem for Indian Muslims as according to Shourie it should? It has already been said that Brigadier Osman and Havaldar Abdul Hamid were not deterred by the thought of "opposing a *jehad*". Admittedly not even did the most conservative Muslim religious leaders of India suffer any confusion or second thoughts on this issue. *Jehad* as a concept and an attribute of Islamic credo is just as valid today as it was fourteen hundred years ago. But the circumstances do not call for a *jehad* and certainly Indian Muslims do not feel the need for a *jehad*. Arun Shourie cannot first insist that on his reading of the *Quran* a permanent involvement in *jehad* is mandatory and then argue from that that such a mandate or sanction does not allow for allegiance to a non-Muslim or secular society.

Nothing really flows from Arun Shourie's statement that Muslims treat the *Shariat* as a seamless garment and the removal of a single thread would lead to disintegration; that since some threads are an eye sore, the whole garment should be ripped thread bare to allow for selection of the attractive threads and rejection of the rest. This is not relevant because nobody has seriously argued this. The *Quran* and the *Hadis* refer to a

multitude of topics and not all can be said to be of equal importance. Some provisions are obviously spiritual in nature, others pertain to rituals of worship and yet others purport to provide a comprehensive scheme for social organisation. But of course the *Quran* is not exhaustive. There are situations which arise in a modern society to which *Quran* or *Hadis* do not provide direct answers. The expeditions to the polar regions and communications with Scandanavian countries pose the problem of schedules for five prayers of the day and for the duration of the *roza* (fast) during *Ramzan*. Sunrise to sunset would certainly be absurd in some cases. Similarly there is nothing in the *Quran* or *Hadis* to resolve the issue of organ transplants, a matter on which initial religious response would inevitably be negative. Then, there is the everyday problem of interest in banking and other transactions.

Workable solutions can and indeed have been found in all these matters and they have not lead to any controversy or doubt going to the root of the *Shariat*. *Ijtehad* or interpretation, believed by some scholars to be closed some centuries ago, is in principle still available. So indeed is *ijma* or consensus amongst the learned. Indeed the king of Saudi Arabia who is also the protector of the Holy Mecca and Madina, himself appealed to the entire Muslim population of the world to work on *ijtehad* for development of Islamic thought and in order to absorb the vast industrial development of the last few decades. Speaking at the inauguration of the Constituent Conference of the Islamic Jurisprudence Academy in June 1983, King Fahd Ibn Abdul Aziz said:

> It should be noted that dissension among Muslims has entailed the *Ulema*'s reluctance to come forth with unanimous opinions regarding the problems of modern life. As you notice, the rapid succession of events in the world today, with the ensuing hosts of questions, have caused the problems to accumulate. Although *Mujtahideen* among the *Ulema* and jurists have always been available everywhere, the situation is momentous and the responsibility before God is so heavy that it cannot be fully assumed by anyone's individual *ijtihad*. Such *ijtihad* must be validated by the *Ulema*'s approval after

> due research in and consideration of old and new jurisprudence in this regard. The call for the establishment of a World Assembly of Islamic Jurisprudence reflects an imperative need at this stage of development of the Muslim *Ummah*. Indeed, it provides the truly Islamic response to questions raised by the challenges of modern life. This requires the pooling of efforts by jurists, scholars, sages and thinkers throughout the Muslim world with a view to seeking answers to the questions posed by the challenges of our time, based on the reality of our tolerant *Shariat*. Indeed, there is no salvation except through observance of its decree: "Who is a better judge than Allah for men whose faith is firm?"

But where King Fahd speaks of an earnest endeavour to find modern solutions to modern problems within the spiritual and theological framework of the *Shariat*, Shourie takes up the iconoclastic hammer against a system which prides itself in having banished icons from its environment. Shourie's advice is:

> The more he (the Muslim) makes this also a Hindu-Muslim issue the more he will instigate a backlash. Nor can one hope to shut off enquiry and debate by asserting divine origins. For one thing, the scriptures of *others* also claim to have originated with God or to be departing what he said.

But who is making the issue of *Shah Bano* or Personal Law into a Muslim-Hindu affair? Muslims have merely asserted that these matters should be left to them to consider and act upon. It cannot possibly be the case that Shourie can insist that in everything or anything everyone can and must intervene or else it becomes a matter of communalism. Then again, what of *others* who claim divine origin for their scriptures? When have Muslims in India inconsistently questioned the divine origins of other religions and asserted their own? Muslims have merely asked to be allowed to keep their own beliefs intact. If that gives rise to a backlash, Shourie has a ready case of Hindu irrationality to contain instead of waiting indefinitely for an appropriate ground to chastise Hindus.

> Every badge of separateness torments others to assert separateness too—notice the demand that was put forward recently that the Sikhs too should be allowed to have their own Personal Law, notice also the hardening of the sentiments of Hindus *qua* Hindus.

What does a badge of separateness mean to Shourie? How does he equate it with separation? Shourie does not even want to consider what arguably is a plausible explanation for what happened in Punjab. Is the reaction for greater separation not largely, if not completely, due to the Shourie-type thesis of encouraging uniformity? Legitimate expression, when suppressed, often finds violent routes.

The pre-Independence movement of reform in Indian law of Muslims was deaccelerated after Partition, according to Shourie, not by informed choice but due to myopic political compromises:

> The reason has not been any new, suddenly discovered veneration for the Personal Law but the trauma of Partition—the urge to 'leave bad enough alone'—that is, the reason has been expedience not principle. The consequences are before us. These symbols of separateness continue.

But it does not occur to Arun Shourie that he must explain why the golden age of reform could not prevent Partition. Perhaps it even caused Partition. In any case conscious steps for obliterating the factors which contributed to Partition cannot simply be explained away as a matter of irresponsible political expediency. Principles too, after all, grow in a particular soil. They cannot exist in a social vacuum like the Roman law which is taught today.

Shourie's own basic principles have been nurtured on a particular intellectual diet. Either that, or inadequate research, can explain the propositions he culls out of his discussion. Shourie believes that "no Muslim leader or organisation has argued that the verdict in *Shah Bano* is unjust; that casting a 75-year-old indigent woman off after 43 years of marriage and five children without any maintenance is right and just." But nobody says

that *Shah Bano* should not be provided for. Her provision is imperative irrespective of her age, beauty or the number of children she bore her husband. And nobody said that since there is nothing for her in *Shariat* she must suffer in silence. The point that Muslim leaders made was that the fault concept of divorce is alien to *Shariat*. Divorce is considered reprehensible though permitted by law. But divorce severs all links between a man and a woman. She must look to her blood relatives or legal heirs for maintenance, just as she would if she never got married in the first instance. This is not limited in the manner maintenance is limited under Section 125 of the CrPC. She can, of course, demand any balance of *mehr* that may still be overdue. If the *Shariat* has a comprehensive scheme Shourie should say why it is not just and fair to apply the scheme of maintenance. He need not betray his 'secular' principles in doing that. He should also conspicuously state his preference for penalising a husband for divorce over simply providing a woman adequate maintenance as well as his stand on the role of 'fault' in divorce law.

On another tack Shourie states:

> In short, the fundamentalists are right: In asking the husband of the 75-year-old Shah Bano to pay her a maintenance allowance, the Supreme Court has gone contrary to Muslim Personal Law. That is a reason not for reversing the verdict but for re-examining Muslim Personal Law in the light of modern secular principles.

Even if the verdict in *Shah Bano* was not contrary to *Shariat*, the reasoning of the Court as well as the *obiter dicta* are pretty offensive. It has been argued elsewhere in this book that there was a simple way of upholding Section 125 without violating *Shariat*. But an iconoclast seldom pauses to consider alternative ways of making his point. Shourie may finally reject *Shariat* but he should at least know what it says. Fundamentalism is least intelligibly countered by fundamentalism.

Despite Shourie's extensive perusal of European authorities on Islam and the *Hadis* compilation of Muslim and Bukhari, and of course some considerable reading of the *Quran* itself, he

remains bewildered about a simple matter. According to Shourie the *Quran* is far from all encompassing and *Hadis* are far from authentic in totality. Then comes a preplexing paradox. If Islam is perfect what is the need of *ijma* (consensus) and *ijtehad* (interpretation)? On the other hand *ijma* and *ijtehad* inject man made law of "ordinary mortals like us." They also cause a "chaos of opinions on every point, to endless disputations, to dangerous free thinking." None of this is correct. *Ijma* and *ijtehad* has seldom involved ordinary mortals and certainly not persons who do not subscribe to Islam. There has been an abundance of debate and difference of opinion but never "dangerous free thinking." Even the disputes which attract Shourie are remarkable—whether the saliva of a cat is clean or unclean; whether the problem of *Munakahat-ai-Jinn* (marriage with a Jinn) has relevance to the law of inheritance. How many Muslims do one see in India married to Jinns or drawing blood for being defiled by a neighbour's cat? On a more serious plane the practical solutions found for apportioning of property when the heirs are multiple or a person is punished for adultery, or the imperative demand for commercial profits despite prohibition on taking interest, become for Shourie an admission of the inherent weaknesses of the *Quran*, instead of being an obvious proof that what he thinks is archaic or unacceptable in the *Quran* may well be a figment of his imagination, as well as that of the priests he opposes, instead of the eternal truth actually stated. And so far as Shourie is correct in saying that mortals have been responsible for recording the traditions (*Hadis*) and of sifting them; and that the application of *Shariat* is through secondary rules of selection and priority, does it follow that the talk of re-examining these rules leads unjustifiably to a cry of moral indignation? The complaint has been against a credulous acceptance of hostile interpretations of the *Quran*, a questionable motive in examining *Shariat*, and ultimately an arrogance of infallibility, amongst persons who approach the *Quran* as though it were an ordinary legislation.

Shourie would have been on more comfortable ground if he had only expanded his study to the opinions of great Muslim judges like Justice Sulaiman, Justice Mehmood and, more recently, judges like Krishna Iyer. It is foolish to conclude an argument

on the basis of Chief Justice Chandrachud's approach in *Shah Bano* or the Indo-Anglican exposition of Muslim Personal Law, with its inherent prejudices against Muslims and ill educated *maulavis* who, as *quadis* assisting English civil servants, caused major distortions to creep in. Interpretation of the *Quran* and *Hadis* requires special study. That is not to say that our judges do not have a right to interpret and apply the *Shariat*. There are limits to interpretation, as argued elsewhere in the book, and which the Supreme Court itself recognised in *Mathura Ahir's* case. In any case persons who decide cases about religious law must take pains to understand the context in which it is to be approached. Certainly a man who does not have respect for Islam would not make the best judge of *Shariat*.

Shourie is not the only person who gets himself excited over reforms in Muslim countries. Indeed too much has been made of these reforms by several lobby groups. But none has tried to circulate copies of these documents or reproduce them as representations and articles. Some points should be noted. These are only reforms and do not in the remotest way provide a justification for an Uniform Civil Code. Talk of reform in the Otteman Empire, in Egypt, Syria, Libya, Iraq and Pakistan, especially in matrimonial law, means nothing for the Indian system. In each case cited by Shourie the final decision rests with a *qazi* who is learned in the tenets of Islam and *Shariat* jurisprudence. None of the examples picked by Shourie are a departure from the obvious intent of the *Shariat*. For instance where divorce is concerned the requirement of an attempt at reconciliation is formalised into a divorce court manned by a *qazi* which does not give official recognition to a divorce unless the parties appear before it and go through the motions of conciliation proceedings. Similarly, as Shourie admits himself, "under the Moroccan code of 1958, the *qazi* is first to investigate whether there is any fear that as a result of the new marriage, the existing wife will be treated unequally. The wife can specifically ask him to investigate any particular injury that she is liable to suffer as a consequence." Shourie thinks this is a radical departure from the *Quran* and a provision made despite the *Shariat*'s lacunae. But to someone who reads the *Quran* with reverence and an open mind this is nothing new.

Surprisingly, Shourie does not have a case even on the point that the concepts of *Shariat* are rooted in the seventh century. For instance Shourie's perception of 'slavery' in Islam as well as the doctrine of 'an eye for an eye' as a norm of criminal justice are unfortunately no different from the common man's ill informed view. Arabic is a phenomenally complex and rich language and does not translate easily or accurately. 'Slave' to an Arab is quite different from slaves known to us in India or the Uncle Tom model of America. One only has to visit an Arab home to see the incredible functional equality between servant and master. Slavery was an institution of great vintage at the time Prophet Muhammed set out to give the people of Mecca and Medina a new way of life. Though it wasn't abolished explicitly there is nothing in the *Quran* which encourages slavery or postulates a slave's exclusion from the *Nizam-e-Muhammadi.* At the same time the *Quran* and the Hadis are full of concern for the indigent, orphans and slaves. The Prophet, according to the *Hadis* of Ali-Bukhari, enjoined believers to treat slaves as members of their families:

> They are your brethren. Allah has put them under your charge, so whosoever has his brother under his hand, let him give him to eat what he himself eats and wear what he himself wears, and do not impose on them a work they are not able to do, and if you give them such a work, work with them.

Emancipation of slaves was given great priority and one of the Prophet's closest associates, Hazrat Bilal, about whom it was said that if he did not make the cali to prayer the sun did not rise, was an emancipated slave. Yet Shourie fears slavery in Islam.

As for the theory of 'an eye for an eye', Shourie should notice that this principle of criminology was qualified by the 'blood money' principle. Compensation for the victim, rather than punishment for the offender is a major development in modern criminology and sentencing policy. Islam has had it since inception.

'Eye for an eye' may, in any case, not be as frightening as

Shourie makes it out to be. There is a curious *Hadis* about it which Shourie would not have found of much use. When Prophet Mohammed was on his deathbed, he asked his favourite wife, Ayesha, to ask all and sundry if there was anything owing to anyone. One slave stepped forward and said: "My Lord, you once hit me on my back with the riding crop, perhaps by mistake. But I must get my recompense." The crowd became restive and expressed its disapproval of the man's impertinence. But the ailing Prophet insisted that the man gets justice. Ayesha was asked to fetch a riding crop and the Prophet lifted his shirt to receive the blow. No sooner had he done that the slave leaned forward and kissed the mole on the back of the Prophet, known as the *Mohr-e-Naboowah* or the seal of the Prophethood. This was 'eye for an eye', but one needs a sympathetic vision to spot it.

There is a further point relevant to criminal law. We recognise a distinction in the common law between private and public international law. Similarly the distinction between private (personal) and public (commercial and criminal) jurisprudence is unavoidable in *Shariat* in the case of a non-Islamic state which recognises and respects religious laws of Muslims. For instance, *Bait-ul-mal* or the state treasury is the source maintenance for indigent persons or even unprovided for divorced wives in an Islamic state. No one expects the Indian government to maintain such an account.

Finally, of course, the institutions of *Shariat* which have provoked the instant controversy and spurred Shourie on to ring the knell for *Shariat*, if correctly understood, deserve applause, not contempt. Professor Tahir Mehmood in his P.B. Gajendragadkar Endowment lectures entitled *Personal Law in Crisis* has put to rest all misgivings about *Shariat* and indeed,in an unparalleled example of jurisprudential scholarship, demolished years of ignorance. On divorce and polygamy, Professor Mehmood relies upon two "brilliant and refreshing" judgments of Justice Baharul Islam in *Ziauddin Ahmed* v *Anwar Begum* and *Rukia Khatun* v *Abdul Khaliq*. He cites, in addition, Justice Krishna Iyer's dicta in *Yusuf Rowthan*'s case describing the true Islamic law of divorce as "surprisingly rational, realistic and modern" and discrediting the "popular fallacy that a Muslim

male enjoys under the law an unbridled authority to liquidate the marriage." The marriage itself is not just a contract for procreation but a *mithaq-e-ghaliz* or a sacred covenant between man and woman. *Mehr* is not commercial consideration but a token of respect for the wife. "The Muslim wife legally retains her maiden name, her property, her independent legal status and even her school of law, *madhab*, if different from the husband's. Bigamy is hedged in with such stringent conditions that it is humanly impossible for a man to marry more than one woman at a time. *Mutah* or temporary marriage is permitted by a very obscure school of Muslim law and not by any of the three schools prevalent in India—*Hanafi, Shafi* and *Ismaili*. An irretrievably broken marriage can be dissolved, extra-judicially, at the instance of either party or by their mutual consent. Depending on whether a marriage is to be dissolved by the husband or by the wife or mutually, the divorce process is called *talaq, khul* and *mubara'at* respectively. In addition to this is the delegation of the right to divorce, *tafwid-e-talaq* which can be granted to the wife at the time of marriage, to be exercised in specific circumstances including a second marriage of the husband. This must all, to use Professor Tahir Mehmood's phrase, be quite "dazzling" for persons like Shourie.

The amazing thing is that these lectures were available in manuscript to the Supreme Court when *Shah Bano* was decided. They are now available in print for Shourie to change his opinion. And while he is at it he could consider whether the *Quran* would have treated women like this if seventh century concepts had prevailed: "Women have rights against you as you have against them. Fear God in the matter of women. Their rights are the same over you as yours on them. So do good to them."

And that is what Shourie must head. Do good to Islam. Discover its truth. Do not confuse concepts with communication in the seventh century. Professor Tahir Mehmood has staked a claim for *Shariat* as a model for a Family Code in India. Shourie should consider if that is acceptable to the "us" for whom he speaks.

Chapter Twenty

GALLEY PROOFS: REPORTING MUSLIM INDIA

Indian print media has traditionally been somewhat conservative, ploughing the steady furrow of news of "development and national integration". But the combination of the Emergency post mortem and the arrival of the new generation of journalists changed Indian journalism permanently. It would be somewhat simplistic to give the entire 'credit' to the Emergency, if indeed such a word is at all apt for it. The fact is that *India Today* was born long before J.C. Shah provided the press hacks with their most exciting copy since the China war. Arun Shourie's writing finger had already started twitching and, at least to him, the wall was black with graffiti of disaster. In any case, the last decade has ushered the birth, adolescence and maturity of investigative journalism. And with its growth came the possibility of power, to be used and abused. Suddenly many journalists, like many civil servants and film stars, found the self-imposed confines of their profession unattractive. They reached out covertly and overtly for real power—the power of politics and money. Major political battles are now no longer fought on fields of Panipat and Arcot. They are fought across reams of newsprint. Reputations are no longer protected in courts of law. They rest precariously in the vacillating moods of media persons.

When it comes to national media, since large industrial houses control major newspapers and Muslims do not figure in the list of large industry, there is no automatic voice or forum for Muslims. A sprinkling of reputed senior journalists like Rasheed Al Talib, Fatima Zakaria, Saeed Naqvi, Ayub Syed and Khalid Ansari is just a drop in the ocean. The point here is not at all as to how fair a particular newspaper has been from time to time. Take the example of *The Times of India*. Having preemptorily refused to entertain any articles on the *Shah Bano* issue which questioned the validity of the decision on the ground of a

general policy "not to publish anything concerning it except Letters to the Editor", the paper suddenly succumbed to the temptation of permitting some harsh "home truths" about Muslims published in an article by Vasudha Dhagamwar.

The point is that there is nothing which inspires confidence amongst Muslims about editorial policy and ability to express the Muslim point of view in a forum which does not alienate or exclude the viewpoint from mainstream thought processes in the country. Here, for instance, the Urdu language papers fail, as does a paper like *Radiance*, the organ of the *Jamait-e-Islami*. They remain confined to a microscopic Muslim audience. While they have an instrinsic value for initiating debate and exchange of views within the community, they are barely known or are looked upon with distinterest in the rest of the populace.

A major breakthrough in reporting on Muslims was made by M.J. Akbar in his journalistic phenomenon, the magazine *Sunday*, in the middle of 1980. I refer here to his coverage of the Moradabad riots in a manner that shocked and startled a nation which had suffered hundreds of Moradabads to take place for years. For the first time someone spoke of how inhuman and callous it could be. That one article did more for M.J. Akbar than years of painstaking constructive work achieve for a public figure. Akbar became an overnight beacon for Muslims, high and low. His stock with Muslims was so high that a Muslim Supreme Court judge recently confided to me that he had stopped reading *Sunday* when, in 1985, Akbar was "eased out" of the magazine. Of course there was no such thing because Akbar continues to be the Editor of the other important publication of the group, *The Telegraph*. It must be said to Akbar's credit that he became a cult figure without having to give anything. The Muslim community, starved of a public communication channel, desperately grasped at the first voice of conviction.

But reporting riots is no longer good copy. Communal organisations have made radical changes in their postures. Now no one can be dramatically blamed for riots because everyone condemns them. Indeed the recent festering communal trouble in Gujarat indicates that journalists like Akbar prefer to ignore it. Communalism, like socialism, is becoming a common phrase

with elusive substance.

Suddenly two distantly related subjects have liberally occupied media columns to the exclusion of the conventional reporting on communal trouble. First, M.A. Jinnah's culpability in breaking up India and second, the "loathsome" provisions of Muslim Personal Law. There may be some justification in the substantial commentary on Personal Law, considering the sharp conflict of opinion in the country on the *Shah Bano* case. But what is it that has caused the departed renegade Congressman's body to be exhumed for fresh historical scrutiny? K.R. Malkani and Arun Shourie have fashioned the curiosity about Jinnah through considerable effort, prompting Rafiq Zakaria and his like to walk right into an ingenious trap. Mr Zakaria's earnest endeavours to establish Jinnah's secular and nationalistic instincts are not really needed by the man who became a legend in the days of giants, but would certainly give Mr Zakaria the unhappy privilege of becoming living proof of a paranoid Hindu's apprehensions. The logic is perversely simple. Jinnah was bad because he destroyed Indian unity. Zakaria is defending an enemy of India. So Zakaria must be sympathetic to the enemy's cause. Strange as it might seem, a non-Muslim's defence of Jinnah is far more plausible.

The articles on Jinnah are really not about him. They are about Indian Muslims today. There are a warning to the state that myopic pampering of Muslims could lead to a catastrophic repeat of unpleasant history. The warning is clear in Shourie's characteristically felicitous prose:

> [The] awful decade, 1937-47, shows how things can change in just 10 years. In 1936 the League, even among the Muslims, was not one of a number of the smaller contending parties. By 1947 Partition had become inevitable. The decade shows how potent religion-as-poison can be. It shows how a person who is himself not religious—Jinnah's fondness for pork and ham was well known, he could barely speak the Urdu language he said was endangered—it shows how such a person can in fact come to embody the passions of a religiously inflamed community, its resentments. It shows how the resentments can be inflamed into hatred, how they can

become real and potent even when the grounds for resentment are fabricated. It pinpoints the moment of danger: the moment when the leaders take to inflaming hatred and separateness in the followers.

The decade shows that to combat the danger one must act in time—i.e. one must discern the potential inherent in a move, an event, and act to forestall it. To wait till its effects have matured, till all the data is in, is to consign oneself to certain defeat. It shows too that among the best indicators of what a leader or group is up to are the declarations of the leaders themselves. Such groups make no secret of their aim. The speeches of the leaders, the resolutions, and even more so the pamphlet-literature, the speeches of the second-rung leaders, all proclaim the goal and what the group is going to do to attain it. The point is to study the speeches and resolutions diligently, and to take them seriously.

"Taking them seriously" means to spot a new situation when it arises, to recognise when a group and its leaders have declared war on the country. And then to change one's ways accordingly. You cannot go on minding your personal affairs as of old, pursuing your personal businesses and careers as of old, and expect that, in spite of everyone going on in the old way, the new situation will somehow be overcome. To overcome the challenge the country must acquire the ability to defeat the Jinnahs in the field of power. It must fashion an answer to the "pistol" that the Jinnahs forge.

The Illustrated Weekly of India
October 20-26, 1985.

That is logic too cold for comfort. But it also overlooks certain alternative explanations of the emergence of Pakistan, such as suggested by Ayesha Dalal and Stanley Wolpert in their respective books on Jinnah. For Jinnah's critics one crucial pronouncement remains difficult to explain. Speaking to Pakistan's Constituent Assembly on 11 August 1947, Jinnah had said:

You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in

> this state of Pakistan.... You may belong to any religion or caste or creed—that has nothing to do with the business of the state.... We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one state.

If that was not a clear enough indication of his intent, the Governor-General-designate continued:

> I think we should keep in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.

Mistakes may have been made which created Pakistan. Mistakes they must have been if Jinnah could speak in terms of amity and unity at that critical moment and, some thousand miles away, Mahatma Gandhi could be conjuring up incomprehendible and unbelieveable plans for a peace march which would overwhelm the nascent border between India and Pakistan. There are lessons indeed in Partition, but lessons of compassion, not belligerence. One thing Arun Shourie doesn't understand is that force can never keep a nation together. Determination not to allow history to repeat itself is far too inadequate. The beginning of the answer may be to attempt to discover why it happened the first time.

It isn't just Muslims whom Shourie cannot convince with the dexterity of his arguments. Other Indians too have found his prognosis of Partition alarming. In a powerful rejoinder to Shourie, Madhu Kishwar and Ruth Vanita, two women who have shaped the modern feminist movement in India, have ripped apart the veneer of scholarship to charge Shourie thus:

> He assumes that he is taking an 'impartial', 'secular' stand as an Indian. However, if we analyse both the content and the language of his article, we find that he uses the past (a) to

justify the state machinery becoming more and more repressive on the pretext of maintaining national unity, (b) to argue in favour of a highly centralised, authoritarian polity and (c) to justify the increasingly communal and antiminority standpoint being assumed by Hindus in the name of 'nationalism'.

The authors then proceeded to put ten questions to the nation. Not one of these could be asked by a Muslim without creating a major controversy about his or her loyalty to India:

1. Why is it that the Muslims continue to be a heavily disadvantaged minority, economically, culturally, socially, educationally and politically, even forty years after Independence, and despite all the fancy talk of building a secular India?
2. Why are the Muslims continuously subjected to riots and organised violence, mostly with the active connivance of the state machinery, which is largely controlled by the Hindus?
3. Why does the police almost always end up protecting those communally-minded Hindus who are behind riots? Why does the police often actively abet and indulge in violence on the Muslims, a recent example being Bhiwandi?
4. Why are the poorest Muslims constant targets of attack?
5. Why has the Congress party cynically exploited communal politics for electoral purposes, despite all its secular pretensions?
6. Why is it that even today, a large majority of Hindus will not eat food cooked by Muslims?
7. Why is it that even in big cities most Hindu landlords will not rent their houses to Muslims? And when Muslims, confronted by such prejudices, end up living in predominantly Muslim areas, why are they accused of deliberately ghettoising themselves to create mini Pakistans?
8. Why is it that in the eyes of most Hindus, every Muslim is a Pakistani agent—if not actual, then potential? Why are Muslims constantly expected to prove their loyalty to India? If Hindus criticise the government, they are seen as exercising their democratic right as citizens of India. When Muslims or

Sikhs do the same, why are they often accused of being not just anti-government but anti-national?

9. Most Muslims who chose to stay in India after Partition did so as an act of faith in our democratic polity. Has that faith been honoured? Why does one often hear statements like: "Send all these Muslims to Pakistan" or, even worse, "annihilate them" (In *sabko mar bhagao Pakistan.*)

10. And, finally, it is time Hindus realised that just because they are the majority community, they have got into the habit of projecting their sectarian interests as 'national interests'. For instance, even many liberal forums, organisations, conferences, which identify themselves as 'all-India' bodies are exclusively or predominantly composed of Hindus. Yet no one challenges a meeting attended exclusively by Hindus being termed a meeting of Indians. However, a group of Muslims or Sikhs or Christians holding a meeting even on a subject of all-India concern would be labelled a 'meeting of Indian Muslims' or a 'torum of Sikh intellectuals', even when they are not deliberating only on minority issues.

Thus Shourie's "we" is the arrogant "we" of the majority community arrogating to itself the right not only to be considered the genuine Indian voice, but also to dictate to minorities their rightful role.

The Illustrated Weekly of India
January 26–February 1, 1986.

Even while rejecting Shourie's somewhat *a priori* argument about Partition it may be argued that at least it is necessary to understand Partition. Perhaps in the same way as it may be necessary for Europe's present youth to understand the two World Wars. But no more.

More than Partition or Jinnah, Pakistan must be understood. We may be too quick in casting an accusing finger at them. They may be insensitive about our problems as indeed we may be about theirs. But should we forget that we share a common culture, a common heritage? Thousands of Hindu Punjabis settled in Delhi speak of Lahore with affection and greet Pakistani visitors as long lost friends. We yearn for each others clothes and trinkets, for each others films and television

programmes. But we cannot rid ourselves of suspicion. Admittedly Pakistani media uses a grotesque imagination in speculating about India's "constant and clandestine moves to humiliate and dismember Pakistan". Interest in Indian Muslims too may be somewhat exaggerated. On the other hand, Indian media subjects itself to a willing suspension of disbelief when it comes to apportioning responsibility upon Pakistan for our own failures. Sometimes the naive credulousness becomes fantastic. In a recent newspaper report of two disguised terrorists, the correspondent reported that a "medical examination confirmed that the terrorists were Pakistani"!

No sensible Indian, Muslim or otherwise, would condone a deliberate attempt by Pakistan to create instability in our homeland. But callous accusations injure on both sides of the border.

Curiously we display an ironical contrast in our political stance towards China and Pakistan. Our first major international betrayal and humiliation came down the slopes of the Himalayas from China. Our first serious political insurgency which paralysed Bengal and parts of Bihar, the Naxalite movement, was inspired and instigated by Mao's Communist China. But we do not seem to nurse a public grudge against China. Even when our faithful allies, the Russians, had their hands full with Chinese dragons, we were not moved to create any unpleasantness for China. We supported their entry into the United Nations whilst showing scant respect for Taiwan by involving its name in a spurious espionage scandal. But Pakistan, with which we share language, culture and a resplendent past, is a constant whipping horse for our politicians and intelligence agencies. We ignore the Chinese A-bomb and their 120 Divisions but we froth at the slightest mention of the Pakistani nuclear programme. We opposed Pakistan's re-entry into the Commonwealth in 1981 even as their President was extending cooperation in the Indian Airlines hijack. Maulana Azad had believed that "the division is only on the map of the country and not in the hearts of the people" and had expressed his belief that it was "going to be a short-lived Partition". But it has turned out to be more than a Partition—it has become a matter of broken hearts and entrenched hatred.

Pakistan too has looked for a convenient enemy. When

ideology fails, as it often has, fear of invasion and annihilation keeps the steam going. The propagators of Pakistan did not need Partition as desperately as their successors seem to need its memory to prosper.

Even Muslim commentators in India are guilty of squeezing blood out of the corpses of Partition. M.J. Akbar, often described as the "only voice" of Muslim India, in his book *India: The Seige Within* states:

> On 14 August 1947 Mohammad Ali Jinnah sold the birthright of the Indian Muslims for a bowl of soup.

Once again, why must an analysis of our contemporary problems fall back on Partition? Furthermore, Mr Jinnah, who wasn't successful in convincing his progeny, could not have sold our birthright. We are still in command of our destiny. Less than a third amongst us left India. It hurts when our own loyal brethren purport to mortgage our birthright for an arid historical theory.

Javed Gaya, a young lawyer from Bombay, found a suitable reply to this theory:

> Communal politics can only thrive in a climate of ignorance, prejudice or the inability to see two sides of a question. It is not enough to damn the Jinnahs who may exploit these sentiments to aim at legitimate ends; it is necessary that we also recognise the myth-makers, the forces of ignorance and darkness in our midst.

It is all too easily assumed that Pakistan was a foster child of religion. Religion may have been the midwife but it cannot claim paternity. However, for Akbar the pedigree reads different:

> The *only real* danger that India still faces comes from the same theocratic interests which created Pakistan in 1947; *the other dangers have been or are being resolved.* In the 1940s the Muslim priests played the divisive game, with help from many quarters, since they knew their future was bleak in a modern and secular society. In the 1980s the Sikh priesthood

has intensified a similar battle. The Muslim *mullah* succeeded partly because the secular politician did not know how to confront him, the Sikh *panth* is hoping for the pattern to repeat itself.

Unfortunately, that reflects complete ignorance not only of what happened in the 1940s, which may be understandable considering Akbar's age, but also what is happening amongst Muslims and Sikhs today. The nonchalance of a bureaucrat with which Akbar speaks of other dangers being "resolved" may have the key to our problems today. We do not learn from history, we purport to shape history according to our desires.

There is no connection, comparison or compatibility between what happened in 1947 and what is happening now. There are no priests in Assam, Nagaland, Mizoram, Andhra Pradesh and Tamil Nadu but there is strain. And Bhindranwale was not like Jinnah. For that matter, Akbar and Jinnah have more in common than Jinnah and the *maulavis*. An interesting trivial incident reflects Jinnah's self-esteem very accurately. Soon after Partition Jinnah had to pose for an official photograph. Much to the photographer's embarrassment and anxiety he happened to be just in the mood to take leisurely puffs at a cigar. The flustered and apologetic photographer made bold to suggest to the *Qaid-e-Azam* that perhaps the cigar should not be in the frame. Jinnah was puzzled: "I am your leader, damn you, not your prophet," he said.

Can a Muslim *maulavi* or a Sikh *granthi* or for that matter a secular prophet like Akbar make a public statement of that sort and continue to be a "danger" for anyone, not to speak of India? Isn't the failure to understand Jinnah and the Pakistan movement quite patent?

If there is any doubt after this, Jinnah's own words at Aligarh in 1937 should conclude the case against Akbar:

> What the League has done is to set you free from the reactionary elements of Muslims and to create the opinion that those who play their selfish game are traitors. It has certainly freed you from that undesireable element of *maulavis* and *maulanas*. I am not speaking of *maulavis* as a whole class. There are some

of them who are as patriotic and sincere as any other; but there is a section of them which is undesirable.

A story written for children by Dr Zakir Husain may well have been intended to illustrate the predicament of M.J. Akbar. "Blow Hot Blow Cold" is a story of a woodcutter and an Indian version of a Lilliputian in a forest. The woodcutter got to the forest one chilly morning and since his hands were quite frozen he blew on them. The Lilliputian was curious. He went up to the woodcutter and enquired: "What are you doing, Sir?" Replied the woodcutter: "I do this to get myself warm". The amused Lilliputian emulated the gesture and tripped away into the shadows. He happened to come by the spot again a few hours later. The woodcutter was busy over lunch, baking potatoes. But as the potatoes were very hot the woodcutter blew on them before eating them. The Lilliputian was perplexed. He knew the fire was hot and so presumed that the potato must also have been hot. So why blow? "What are you doing now, Sir?" he asked again. "I am trying to cool these," replied the woodcutter. Which led the Lilliputian, by now completely confused, to query: "But how do you blow hot and cold?"

Just as the breath can blow hot and blow cold, *maulavis* and *mullahs* can be different. Some of our *maulavis* are of the highest calibre as theologians as well as human beings. The Westerner's perception of a wicked and socially impervious man behind the flowing beard and gown has no place in Indian politics. Maulana Sayeed Ahmed Akbarabadi, whose views find an echo in the *ijtehad* speech of King Fahd of Saudi Arabia, is not an aberration. Maulana Mohammed Salim Saheb Qasim, *Muhtamim* (rector) of Darul Uloom, in Deoband and Maulana Syed Abdul Hasan Ali Nadwi popularly known as Ali Mian, head of the Muslim Personal Law Board at *Nadwat-ul-Ulema* in Lucknow may not publically come across as positively for reform but their influence has always been very constructive and creative. Ali Mian, especially, has acquired a very special place in the hearts of Muslims of north India and can play an important role in any development on the issue of Muslims in the months to come.

M.J. Akbar may have had persons like Maulana Bukhari, the

Shahi Imam of Delhi's Jama Masjid, as the sort of person whose increasing hold on Muslim masses poses a threat to Indian unity. Maulana Bukhari may well have that notion of his own prowess. But in the last General Election, from his polling station only one vote was cast for the candidate he supported publically. That, however, does not deter him from the boxer Muhammed Ali style hyperbole: "I am not saying that we shall launch a *jehad* right now. Though let me tell you that if I were to call for a *jehad* there would be thousands willing to come forward to lay down their lives." In fact, nobody may accept Imam Bukhari's version of *jehad* but so long as buffeted Muslims arrogate to themselves the right to make definitive pronouncements on the Muslim predicament as well as arrogantly influence decisions about their future, Imam Bukhari's words will continue to sting.

If Imam Bukhari is a credible threat, men like Akbar have cause to be very worried. The Jama Masjid area residents are far more cynical. They have watched with amusement as successive governments have played "blow hot blow cold" games with Imam Bukhari, by first inflating him as a popular religious leader and then "acquiring" his assistance for electoral gain. Then comes the inevitable deflation as government gets pre-occupied with matters of state and Bukhari's games become tedious. The inflatable spectre is a product of our own insecurity. It can hardly be cited as an example of a theocratic challenge to the state.

The pronouncements which keep Bukhari and his like alive are of the following nature, taken from Akbar's *The Seige Within*:

> But that [Mahatma's] death did bring about what he had spent his life trying to achieve; it ended the madness. There was a pause long enough for Muslims to begin to pick up the pieces. But the important nationalist Muslim leaders could not find the energy or time to map out the future. The three who could have led the revival of the community were Maulana Azad, Rafi Ahmed Kidwai and Sheikh Abdullah. The Sheikh remained in Kashmir; Rafi Ahmed Kidwai died too soon, and the Maulana followed a little after. The ruling party tended to promote those Muslims who could find a

> balance between its need for their vote and the Muslim's need for help. The simplest way of doing so was to ignore the difficult business of economic needs and concentrate on the protection of identity and religious rights. The stress, therefore, was on organising the community to withstand attacks on its person, on its religious law, the Muslim Personal Law, and on its institutions, like schools and *wakfs* foundations. Protection of Urdu became a matter of life and death.... The small number of educated and financially confident Muslims still had half an eye on Pakistan.

This pretentious pronouncement is like the betrayal by one's own advocate. Akbar's knowledge of Muslim leadership must be pathetic if he does not know what Dr Zakir Husain was doing in Aligarh and hundreds of others were doing in other parts of the country. His understanding of the Muslim psyche is incredibly inadequate if he thinks Muslims cling to preoccupations with identity because some superior brain manipulates them. His perceptions of sociology perverse if the passage of one cricketer becomes the basis of Indian Muslims' unsevered umbilical cord to Pakistan. The truth is that Indian Muslims chose not to have their own separate leaders. They placed themselves squarely in the nationalist edifice. They chose to be safe in Nehru's *aagosh* (lap).

At a considerable, and not noticeable, remove from the ambitions and devices of Imam Bukhari are actual learned *maulavis* of Nadwa and Darul Uloom. The latter indeed have a remarkable history of nationalist fervour and struggle. In 1940 when, according to Akbar, the theologians and priests were precipitating separatist demands, the *Jamaiyat-ul-Ulema-e-Hind* (a body of all Ulema of India founded to bolster the *Khilafat* movement) confronted the Lahore Resolution of the Muslim League with these words:

> This Conference, representative of Indian Muslims who desire to secure the fullest freedom of the country, consisting of delegates and representatives from every province, after having given its fullest and most careful consideration to all the vital questions affecting the interests of the Muslim community and the country as a whole, declares the following: "India will

> have geographical and political boundaries of an individual whole and as such is the common homeland of all the citizens irrespective of race or religion, who are joint owners of its resources. All nooks and corners of the country are hearths and homes of Muslims who cherish the historic eminence of their religion and culture which are dearer to them than their lives. From the national point of view every Muslim is an Indian. The common rights of all residents of the country and their responsibilities in every walk of life and in every sphere of human activity are the same. The Indian Muslim, by virtue of these rights and responsibilities, is unquestionably an Indian national and in every part of the country is entitled to equal privileges with that of every Indian national in every sphere of governmental, economic and other national activities and in public services. For that very reason Muslims own equal responsibilities with other Indians for striving and making sacrifices to achieve the country's independence. This is a self-evident proposition, the truth of which no right thinking Muslim will question. This Conference declares unequivocally and with all emphasis at its command that the goal of Indian Muslims is complete independence along with protection of their religion and communal rights, and that they are anxious to attain this goal as early as possible. Inspired by this aim they have in the past made great sacrifices and are ever ready to make greater sacrifices".

While Deoband threw its theological clout behind the non-cooperation movement, a brilliant theologian, Shibli Numani, was beginning to create ripples at Aligarh. Though for sixteen years Sir Syed's partner in the exciting days of Aligarh's history, by 1912 he had publically indicated his independent approach. Writing about the Muslim League in the *Muslim Gazzette* of Lucknow he said:

> A tree is judged by the fruit it gives. If our politics had been serious politics they would have evoked a zest for struggle and a readiness to suffer and sacrifice for an ideal

Shibli's considerable influence over students of Aligarh spawned

a spate of nationalist journals like Maulana Hasrat Mohani's *Urdu-i-Maulla*, Maulana Waliuddin Salim's *Muslim Gazette*, Maulana Zafar Ali Khan's *Zamindar*, Maulana Muhammad Ali's *Comrade*. These were all old boys of Aligarh. Besides them Maulana Abul Kalam Azad, though not an alumnus of Aligarh but immensely impressed by the thoughts of Shibli, brought out his *Al Hilal* in 1912.

Much of the inspiration for the *Jamaiyat*'s total involvement in the *Khalifat*-Congress programme came from Deoband's leader, Maulana Mahmud Hasan, born in 1851, the favourite pupil of Deoband's founder and commonly known as *Shaikh-ul-Hind*. Indeed he even initiated a *fatwa*, signed by 925 eminent Muslim divines, giving religious sanction to the non-violent, non-cooperation movement. Many of the *Ulema* were imprisoned. With that *Shaikh-ul-Hind* toured United Provinces exhorting Muslims to rise in support of the non-cooperation movement. Even as his body visibly succumbed to age and illness he made a brave personal gesture to be at Aligarh to lay the foundation of Jamia Millia Islamia, since 1857 the first challenge of Indian Muslims to the British:

> I have come here at your call in the hope of rediscovering one of my lost treasures. There are pious people whose faces are lit up with the flow of intense worship, but their hearts start sinking when they are asked to rise and save the *ummah* from the hands of the *kuffar*; their fear is not the fear of God but it is a few individuals and their military weapons that they fear most....
>
> Comrades, I, with a few of my friends, took a step forward towards Aligarh when I felt that I shall find sympathisers in my grief (which has been consuming my bones), not in *madrasahs* and *khanqahs* (monastaries) but in schools and colleges; thus we have been able to establish intimate relations between two historic centres of learning in India, Deoband and Aligarh.

Shaikh-ul-Hind's words at the birth of Jamia were a culmination of his firm belief that a synthesis was necessary between the new and the old to prepare Muslims for modern India.

Though Sir Syed had himself purported to institutionalise the same synthesis, time and events had bypassed his position compared with *Shaikh-ul-Hind.* Sir Syed had become orthodox. But the important point is to note the constant creative instinct and not to be misled by the transitory context.

How is it that despite men like Gandhi and *Shaikh-ul-Hind* Partition could not be averted? Since the theologians fought against Partition, what was it that caused it? Partition became imperative, thought not inevitable, because there were not enough men like Maulana Mahmud Hasan and Mahatma Gandhi. It became a reality because for too long too many people did not believe that it was possible. It became unavoidable because once people believed it to be possible they became impatient to see it as reality. Partition was a result of inconsiderateness on both sides. Not of intransigence of one and the timorousness of the others; not the communal politics of one and secular principles of the other. Partition came because little things had shattered faith.

Chapter Twenty-One

THREE CRITICS AND A LIBERAL REJOINDER

One might have to stretch one's belief somewhat to accept that the seemingly candid dissension on the Muslim Women's Bill as well as the Muslim minority in general is simply an aspect of the late flowering of Indian democracy. Indeed, no such thing has happened. In fact, quite the opposite may have happened. Twenty years ago matters of concern to Muslims could be discussed dispassionately, the fading shadow of Partition notwithstanding. There have been unpleasant moments to be attributed to transitory passions but Muslim-baiting was not a respectable political sport. There were communal riots and attempts to notify 'sensitive' government positions from which Muslims were unselfconsciously excluded. But a person who unashamedly ridiculed the *Quran* and *Shariat* did not become a 'liberal' on that score. Balraj Madhok was, at best, a peripheral eccentric, like his historian friend, Prof. P.N. Oak. But today Arun Shourie, K.R. Malkani, M.V. Kamath and of course the glittering Trojan horse, Arif Mohammed Khan, have given respectability to the startling assault on Muslim credo.

The most dangerous, perhaps lethal, critique of Muslim culture and identity, not to speak of religion, has come from Arun Shourie, whom Madhu Kishwar recently described as a convert to the concept of oppressive police state to ensure uniformity of social, cultural and religious beliefs and conduct. Arun Shourie's appeal is to reason. How reasonable it is to question the divine attributes of a 'holy' book put together many years after being revealed! How reasonable it is to question miracles because they do not happen in our times! How reasonable it is to pick up isolated liberal postures of modern criminology and contrast them with "eye for an eye" sort of precepts! But Shourie says nothing of our secular system of justice which reaches back to the *Gita* at the drop of a judicial wig and waxes eloquent of the departed Father of the Nation but sees little

wrong in using the rope on criminals. He finds the authenticity of Islamic law incredible but he does not care to comment on the popular forms of religious practices of Hindus which are so much a part of our lives.

Where Shourie dare not venture, Arif Mohammed Khan has cheerfully rushed in. Every believing Muslim has become a fanatic and fundamentalist. Every Muslim leader attempting to absorb and, in due course, express the true feelings of Muslim masses, a cheat. And as large numbers of Hindus applaud his 'conscientious' withdrawal from a Government whose 'obscurantist' approach to Muslim Personal Law he could not bear to tolerate. Arif Khan has signalled that the Muslim ethos is there for dissection and that he would willingly use the knife himself. Suddenly, he is the only Muslim liberal. Suddenly he is the only Muslim anyone cares to speak about. But nobody has even bothered to ask him of his association with the Muslim Majlis' leader, Dr Faridi; his stand on Muslim Personal Law and Minority Character for Aligarh Muslim University way back in 1972; his pronouncement of a genocide against Muslims of India during the 1976 Emergency. But of course, it is never too late to turn a new liberal leaf so long as there are ample figs to eat with it. The point is not whether Arif is a liberal or not. The point is that any assessment of Muslims of India must be done independent of any assessment of Arif's politics. He has not claimed to be a Muslim leader. His pronouncements should not be taken to have a special bearing on the Muslim predicament.

Having put the rider and the pony in perspective, one might return to the three critics who have unburdened themselves in the columns of *Onlooker* in recent weeks. Though Balraj Madhok smells distinctly of moth balls, his 'second coming' should not be ignored. As a historian, Madhok must be very fond of blinkers to have kept them on for such a long period and despite a pile of publications, both Marxist and non-Marxist, which have forcefully argued that from 1857 to 1947 economics, rather than religion or any other thing, motivated the Muslim gentry and masses alike. The predictable dichotomy of *Dar-ul-Islam* and *Dar-ul-Harab* continues to pinch Madhok. But can't he see that he does not have to travel beyond the boundaries of 'Bharat' to discover that peaceful coexistence is not only

possible but easy if people like him do not insist that a permanent line must be drawn between Muslims and Hindus? Like Shourie, Madhok too cannot rid himself of the fear of *jehad*, but he doesn't ever bother to state if, with one-third of the world's population being Muslim, he has ever been at the receiving end of a *jehad*. Havaldar Abdul Hamid surely must have know what *jehad* was when he perished in an attempt to destroy Pakistani armour. Madhok was far away working on Indianisation of Muslims.

Apart from the hidden potential of *jehad*, what worried Madhok is Aligarh Muslim University, Urdu language and the opposition to an Uniform Civil Code. It is all very well to question AMU. But what of Banaras Hindu University? Urdu languae may not be spoken very widely but then so is Hindi quite unacceptable to most of the southern states. As for the Uniform Civil Code, Madhok, like most of its proponents, mouths it like a sacred *mantra*. What uniformity? What Code?

He seems to assume too lightly that the Uniform Civil Code would invariably be a Hindu Code. But why doesn't he say so? Why does he hide behind the constitutional jargon? Considering the fact that Madhok considers the ban on cow slaughter to be right and just, despite the fact that from the point of view of animal husbandry it is a silly decision, it is apparent that his world view starts and ends with Hinduism. It is not Muslims who conjure up the unwholesome spectre of separatism and the two-nation theory but Madhok himself. There are clearly two nations for him—the Hindu nation which must live and the Muslim nation which must wither away. If he really believes that Muslims who 'stayed back' after engineering Partition, are an extension of Pakistan, he would make some efforts to explain Bangladesh as well as the recent happenings in our own Assam.

No attempt at Muslim—baiting can, of course, be complete without *Shah Bano*. Again, like other ardent admirers of that decision, Madhok does not really indicate whether his real concern is the plight of a Muslim divorcee or the enviable right of a Muslim husband to pronounce *talaq*. One would have thought Madhok would consider borrowing the *talaq* concept for his Uniform Code. But then he may not be a male chauvinist

pig. Then he should borrow *khula* as well where the woman initiates the divorce. Speaking of *Waqf*, Madhok thinks it an insult that a woman should look to her parents or the *Waqf* Board, who presumably are willing benefactors in time of her need. But it isn't an insult to spread your hands before a man who has spurned you and severed his links with you. And what else are *Waqf* Boards for? They have sufficient resources too for the job which is being entrusted to them. All Madhok has to do is to use his Hindu persuasiveness over his Hindu contemporaries in the administration to release innumerable trust properties occupied by government or virtually frozen by designating them 'green land.'

Madhok's naive belief that "the greatest advantage of making India a Hindu state will be that it will put an end to communal riots" is like saying that once Nazis had consolidated power in Germany the social hostility towards Jews subsided. Does Madhok have a plan to use Muslim historical monuments (or such as he admits to be of Muslim origin) as concentration camps where Muslims can be 're-educated,' for the want of a better word?

Madhok and Malkani confidently assume that communal riots are started by Muslims. Presumably for the want of a better thing to do. They must both have read Commission Reports which don't seem to be available to anyone else. They must also have a remarkable imagination to conceive Bhiwandi, Moradabad or Meerut as cases in which the Muslims could have calculated that there was something to gain from inciting violence but where, in fact, the mischief boomeranged. But the cleverest twist is the proposition that Muslims lose more lives but the Hindus suffer greater loss to property. Does Malkani know why?

Malkani has a list of Muslim expectations which he thinks are unreasonable. He concedes the Muslims the right to belief in Allah, the Prophet, the *Quran, Namaz, Idd, Ramzan, Zakat* and *Haj*. Thank you. But no mikes for *azan*. But does that mean no mikes for *kirtan* and *jagrans*? No sacrifice of cows because Hazrat Mohammed did not sacrifice cows? But isn't the real reason Hindu sentiments? Malkani speaks of the unreasonableness of decrying scholarly criticism of the *Quran*. But what does

he have to say about court proceedings to ban the *Quran*? Malkani somewhat gravely disapproves of "acres of gloom and doom" in the midst of fast expanding cities. But his keen sense of town planning completely misses the problems of *ghats* and cremetoria. His preoccupation with the 21st century has kept him away from the Varanasi controversy around an electric crematorium. The example of *samadhis* is edifying. With the pressure on land we cannot freeze land use for centuries. But the least that Malkani could think of is leave the graveyards of Muslims to develop. One could do a very profitable swap if Malkani identified all the *Waqf* properties which, since Independence, have been taken away by the government or other institutions. Let all these be given to Muslims and let Malkani have his disputed temples. The trouble with Malkani is that he wants to have his cake and eat it too.

As to Muslim identity, one would have thought the Muslims might be the best judges. So too about Islam. Malkani is free to judge imperialism. But he might be warned that 'mental ghettos' are often, if not always, correlative to someone's cultural imperialism. Why doesn't Malkani try to be like Muslims? And the 'ghetto' will be shattered in no time.

M.V. Kamath seems to be too engrossed in history to be able to understand the present. The sacking of Somnath is as little a Hindu-Muslim affair as General Pizzaro's incursion into the Inca kingdom was a Spanish-Inca hate affair. It was a standard practice of the invaders of yore to sack the treasure troves. It wasn't a Muslim invader's fault if the ancient Hindus kept their wealth in the temples. They should have thought of bank vaults and the temples would have been left alone. India is no exception. The same thing happened in Rome and in Constantinople. E.M. Forster once said of myopic compatriots: "What does he know of England who only England knows?" M.V. Kamath may well have staked his reputation on very flimsy newsprint by relying upon Williams von Pochhammar's book. There is after all better stuff available at every book store.

There is enough happening in India today for us not to have to look back at Aurangzeb to find an alibi for Hindu hostility towards Muslims. If the past is all that was important how does Kamath explain the situation in Punjab? Besides, it would be

timorousness on our part to accept the charges levelled against Aurangzeb. The truth is that when Kamath looks at the Mughal dynasty he does not see it as an Indian dynasty in the first place. To raise the issue of temples being converted is really a very spurious exercise in redressing an imagined historical grievance. There are deserted churches in England which are being bought up by Asians to be used as temples and *gurdwaras*. As to the Ayodhya matter, Kamath should refrain from leaving it at a level of generalities. *Ram Janambhoomi* and *Ram Janamsthan* can be, and must be, distinguished. Whatever else may have happened, the *Ram Janamsthan* has never been touched by any Muslim king or subject. Communal harmony could be ensured if Hindus and Muslims worshipped side by side, not if one drove the other away. The history of *Babri Masjid* in the years after Independence smacks of intrigue of the worst sort. Recent events also do not come up to scratch in dispassionate scrutiny. Kamath's endeavour should be to separate the grain from the chaff.

Kamath is unusually timid in accepting a pedestrian theory about Partition—that Muslims were responsible for it. There is ample evidence that Partition was caused by a complex combination of factors rather than as a result of an irrational desire of Muslims. After all, even Jinnah was a late convert to the idea of Pakistan. Furthermore, whatever may have been the position of Muslims who opted for Pakistan, their preference has no bearing on the Muslims who made a conscious decision to stay on in India, in some cases in the face of great personal adversity. Hindus did not have to make a choice between their past and their future, their families and their country. Muslims of India did. But instead of getting admiration, they received the wrath of their Hindu brethren. One thing has to be made clear however. Many Muslims have relatives in Pakistan. I know of a family in which twins were born on Independence day and due to a family arrangement one grew up in Pakistan and the other boy grew up in India. One cannot expect them not to feel for each other. In such a case a misplaced sense of joy over a sports event should not become a question mark over the loyalty of the entire community.

Kamath speaks of Islam leaving Hindu society alone. But the

problem is the other way around. Muslims did not engage in animated debates over the Hindu Code Bill. But some vocal Hindus are crying themselves hoarse over *Shah Bano*. Kamath may be right in attributing much of the trouble to Chief Justice Chandrachud's intemperate and infelicitous phrases. But the fact is that in principle *Shah Bano* contradicts *Shariat*. Kamath speaks of Muslims not having made an effort to understand Hindu psyche, but he forgets that there is a distinct difference in the psychological needs of a majority and a minority.

The best thing Kamath has said is reminiscent of Gandhiji's intention to defy the artificial barrier between India and Pakistan—"A start can be made by India and Pakistan coming together under a common market...." But wouldn't it be wise for us first to decide whether Pakistan is really interested in our destination? Kamath has spoken of Hindus and Muslims making an attempt to understand each other's hearts, to begin a dialogue of cooperation. But shouldn't Kamath say something about the deliberate hurt now being inflicted on Muslims by Madhoks and Shouries? Kamath has shown compassion but he must also show the courage to denounce the myth makers.

Chapter Twenty-Two

MINORITY STATUS: DOES SOMEONE CARE?

Thirty-five years ago about thirty million Muslims decided o stay put in their homes and rejected the call of a Muslim nation. Three decades later, Muslims of Hyderabad are selling their daughters for a few thousand rupees. The multitude of social action groups and activist law professors who go around espousing the cause of brick kiln workers and remand home women, not to mention the fir trees of the Himalayan ranges, did not storm Andhra Pradesh to do something about this. Women's protection groups made plans to provide a fund for destitute Muslim women but they don't even know how many young Muslim girls cannot find husbands in the old city of Delhi. The fact is that to most Indians it does not matter what these Muslims, or for that matter any Muslims, do with their minds and bodies. They just do not matter. Except as exotic excuses for experimenting with myopic concepts of a just society.

It took a Muslim film director to make the movie *'Bazaar'* about the dreadful degeneration of the Muslim psyche that they should so callously part with their only valuable possession. But no Muslim leader worth his salt or his name said anything anywhere. Granted that the subject is a very sensitive one and, the people involved would certainly argue, a personal matter; granted, too, that it would be quite vigorously argued that these are not market bargains, that these are proper marriages and Hyderabadi tradition has always required that the bridegroom bring some money for the bride's family, described as 'Jodha, and 'Godha'. The optimist is welcome to believe these explanations but he ought to contemplate whether he would conceive a similar future for his own daughter.

Who is to tell the Hyderabadi Muslims that the money they receive for their daughters does not and cannot alleviate their poverty? If anything, it makes them more servile and devoid of self-respect. It would take a man of some stature to say such

harsh things and yet be understood. There is no man, not a single leader in the Muslim community who could say this and retain a measure of Muslim goodwill. In fact, in recent years, there have been no Muslim leaders, except in a peculiar sort of way Mrs Gandhi herself and her companion, Hemvati Nandan Bahuguna. Both contributed in their own way to the welfare of Muslims, or at least to the talk of welfare. But such interest cannot be a substitute for a leader from amongst themselves. Curiously, in a century long survey of 100 Indians who shaped India in the twentieth century, published recently by *Gentleman* magazine, in the last three decades only one eminent Muslim was picked up apart from film and theatre artistes.

The theme of helplessness, poverty and insecurity is writ large upon the leaderless Muslim community. And by their nature they cannot do without a leader. They do question and cogitate like other communities but they like to follow and be led. Despite this the complete vacuum that exists is to be blamed on the national majority leadership. The Muslim finds himself in India in a very peculiar position. As a member of a minority, and that too a minority that became estranged with the majority at a crucial moment in history, he is not sure that he is trusted. There may be no standing orders or circulars now about 'sensitive' jobs but the Intelligence Bureau has a special cell for Muslims. In any case, little has been done to make the Indian Muslims feel that he is wanted.

Secular India does indeed have a proud record of two Muslim Presidents (who ironically did not complete their terms), a handful of Muslim Chief Ministers, a sprinkling of senior commanders in the armed forces and a symbolic presence of Muslims in other institutions of the state. Yet no one seriously contemplates that one day a Muslim will be the Prime Minister of the country. In any case, the very fact that we have to prove secularism through arithmetic suggests that there are some fundamental flaws. Go to the schools and universities where Muslims are found and you will discover the 'huddle mentality,' a huddle against a hostile world. There are no jobs and opportunities for Muslims in India. Some avenues are opening up in the Middle East but the prosperity brought to traditionally backward Muslim areas has brought a wave of resentment from the

majority. Even responsible leaders not tainted by the brush of communal hatred have been known to make disquietening statements about the flow of petro-dollars. During Morarji Desai's tenure as Prime Minister a serious situation arose when he impliedly questioned the secular commitment of Khurshid Alam Khan, who had made a compassionate plea for victims of communal carnage. "We must ask the Arabs to stop sending the oil which is used to incinerate our brethren," the Member had rhetorically proclaimed and just this synged the Prime Minister of India.

The recent conversions to Islam in *Harijan bastis* of South India is an example in point. The plight of Harijans became painful for their 'betters' as the news of snowballing conversions in Meenakshipuram and elsewhere reached the cities of northern India. Converting was bad; converting for money was worse; but converting to Islam for petro-dollars was the worst. The fact is that there remains an unhealthy paranoia about Muslims even though the implausible thesis that they would soon swamp the country may have only a few supporters. Then there is Aligarh where communal riots have rocked the city almost constantly for ten years. The effect: gradually dwindling of Muslim trade in the famous Aligarh locks and accentuation of the impression that wherever Muslims go they become a sore. Moradabad, Bhiwandi and Ahmedabad are the latest of Muslim trade centres to be hit. The prosperity of export-based trades and their expanding horizons posed a threat. One riot sets back the pace several years.

The Muslims are losing the fight to live with honour. They are turning to their own entrails, like the wounded monkey, to sustain themselves. But how long? Sir Syed Ahmed Khan's dream of making Aligarh Muslim University the Oxbridge for Indian Muslims has turned into a battleground of competing ideologies in which outsiders take an active interest.

Aligarh is an issue that draws the lines of Muslim politics: between the extremist conservative who draws his inspiration from some vague conception of pan-Islamic movement; the ' enlightened ' left wing radical who has long shed his sentimental attachment to the Muslim cause though retained some superficial attributes of Muslim identity, and the wishy-washy liberal,

too scared to state his own position lest he be dubbed a conservative and too sentimental, perhaps honest, to accept the radical philosophy of his friends on the left. He runs from the left pillar to the right post making an unholy mess in the process.

In Lucknow the yearly spectacle of *Sunni-Shia* confrontation has been sidelined by a morbid obsession with religious rituals even at the expense of a vertical divide amongst Muslims, giving the lie to the belief that Muslims are one. Varanasi, the holy city for Hindus, has become an acrimonious battleground for sectarian hostility between *Shias* and *Sunnis*. The same community which otherwise questions the propriety of a Supreme Court judgment pronouncing upon religious tenets, now willingly makes the courts the final arbiter on the issue of shifting *Sunni* graves to accommodate *Shias*.

There are now about a hundred million Muslims in India and all the problems that such a large community can have in an even larger community of people of another faith. Yet there are no Muslim leaders to speak fearlessly and loudly for their community; to demand incessantly on their behalf; to chide them when they are wrong; to control them when they explode at permanent injustice. And it has been virtually impossible for a Muslim leader to emerge in India since the passing of Maulana Abul Kalam Azad and Rafi Ahmed Kidwai. They were born to a system where close association between Muslims and other national leaders was a prerequisite as well as a result of the national movement. But these Muslims leaders were nationalist in the true sense of the word for they did not strive to create a special communal constituency that other Congress leadership developed consciously and devotedly. The result was that thirty years on, the Sikhs, the jats, the Brahmins, the Thakurs, the Harijans, et al. all have leaders and compact vote banks. It is only the Muslims who are rudderless except that inertia and force of habit kept them relatively close to the Congress in general and Mrs Gandhi in particular. But they have started straying in all directions since 1967.

The conditions that existed in the late thirties and early forties do, in a sense, still exist but they are more diffuse and obscure. Muslim support is perceived essential in spurts and starts when elections are near. But there is no sustained awareness

of the need to keep them in the mainstream of politics. And they cannot be kept in the mainstream if they are approached by leaders they do not recognise as their own. For a Muslim leader to rise on his own steam it is necessary for him to be seen in real opposition to the government, be it Congress or Janata. In the din of Indian politics he would have to shout the loudest and, therefore, offend the most. But growing into a nationwide stature would itself be a prolonged and even destructive exercise. He will soon come to believe that his best chance lies in distancing Muslims from the majority even further. If harsh admonitions of Muslim leaders are taken to heart as political sniping and threat to political power of the majority leadership, aspiring Muslim leaders will have no choice but to turn militant. Such militancy we can ill afford in our times.

The prospect of militancy is no idle speculation. The winds of belligerency sweeping the Muslim world have not gone unnoticed in India though the form of extremist movement that has overwhelmed Iran and continues to be a constant irritant for some Arab states might not find a suitable host in the Muslim community of India. Recent communal riots have seen a gradual hardening of the attitude of Muslims. "If the government will not protect us, let us kill to save ourselves," is being heard more and more often. It is, so far, only a sentiment, not a scheme. But it is ominous.

Half hearted efforts to cultivate a Muslim leadership have been a dismal failure. Names and faces appear on the ministerial list and disappear as soon as the list changes. Muslim leaders cannot be made by giving them salary and status. They will be made if they are heard and seen arguing for their constituents. Muslims still have great fortitude. They will suffer hardship so long as they know that they have someone who is not afraid to speak. Someone who does not need someone else's permission to speak.

As things stand in India, secularism has become an alibi for undermining cultural and religious identity. Secularism under our Constitution was meant to introduce unity in diversity, not uniformity. Yet national symbols, gestures, logos, all represent one culture. Indian television introduces its programmes with a

Namaste. A secular Muslim is expected to speak the language of an Irfan Habib or M.C. Chagla. A Hindu, on the other hand, is secular if he takes to the style of H.N. Bahuguna. India adopted secularism to preserve identities, not destroy them. It takes the right atmosphere for such things to be avoided and that atmosphere does not come with the presence of selfconscious Muslims. It is not that the majority way of life should never be chosen as the national standard. It can be so chosen but it should not be taken for granted. Men who had had no voice are bound to be taken for granted.

Indian Muslims do not have to prove their credentials of loyalty any more than any other Indian. In fact, the big spying scandals in the years since Partition have seldom had the involvement of Muslims. But when it comes to formulating national policy on Pakistan, Muslim opinion is not considered relevant. Indeed there have been cases where Muslim citizens have been deprived of their passports on the ground that they visit Pakistan too often. Day in and day out we are subjected to elaborate harangues about the love we bear for Pakistan but we do not seem to be able to overcome the preoccupation with their weapons. India has no mean military strength but one has never heard of the People's Republic of China getting paranoid about it. They are immensely powerful compared with us and show it in their complete public indifference towards our military preparations. Yet we drive ourselves to distraction and scream ourselves hoarse when Pakistan so much as buys a few squadrons of fighter planes. There is no real danger of getting hurt, even though, historically, it is true that the weapons that Pakistan buys get used against us.

When Pakistan offered a 'friendship treaty', we went hysterical. When Sheikh Abdullah purported to grant citizenship to Kashmiris who had earlier migrated to Pakistan, we subjected ourselves to political convulsions on account of security. When Pakistan indicated a desire to return to the fold of the Commonwealth we opposed it. These things do not go unnoticed by Indian Muslims, but even they accept the fact that it is not for them to speak up their opinions. If there was recognition of their legitimate right to speak, why wouldn't a Muslim fill the Indian Ambassador's chair in Islamabad?

Why must the Muslim in India wish to speak up on the issue of Pakistan, one might ask. Why this unhealthy preoccupation? Simply because they have a link and they should not have to be selfconscious about it. When England introduces an Immigration Bill we all chide it for blatant discrimination. Our Ministers travel to Southall to console the Indian community there and assure them of permanent support of the Indian government. If some Indians can be interested in their brethren in Southall, why can't others show concern for their brethren in Karachi?

The Muslim population of India is a crucial vote bank for the Congress party. To some this may be a reflection of their helplessness, to others of their backwardness. But the Congress itself cannot take Muslim support for granted. It must, indeed, recognise it for what it is—a mature, considered opinion of who is to be trusted. But trust can wither. As has Muslim self-reliance in Hyderabad.

Chapter Twenty-Three

MUSLIM SELF-RELIANCE: WE SHALL OVERCOME

Heavy weighs the light of dawn,
How loath you are to rise.
Why protest you love us?
It is your slumber that you prize.

A people are bound by faith,
Without faith they cease to be.
If nothing bind you, you are like meteors,
Not stars in a galaxy.

Muhammad Iqbal

With all the problems that, as Muslims, we have faced in India, it is still a dearer home than anywhere else. The Uttar Pradesh and Bihar Muslims who migrated to Pakistan still yearn for India. They never did find a true home in Sind or Punjab. Referred to as *mujahirs* or *tiliars*, they live a selfconscious life and, at one stage, even had Mr Z.A. Bhutto threatening to drive them out of Karachi into the sea. But can it be said that as individuals and as a community we have done enough? Perhaps "yes" for the nation but "no" for ourselves.

As a backward minority nursing both a historical grievance and a constant apprehension of discrimination or defeat, there was a natural danger of Muslims resorting to the ghetto mentality. The reluctance of young Muslims to leave Aligarh for challenges in the wide world is astounding. Of course the story is a little of the chicken and a little of the egg. But a bold and imaginative programme conceived by Chaudhury Arif of Delhi to train Muslim graduates for the IAS and other competitive examinations has had an amazing response. Housing the boys in makeshift accommodation at the temporary buildings of the India Islamic Cultural Centre, Chaudhury Arif has successfully introduced a scheme which Aligarh Muslim University has toyed

with for years but not been able to start. Curiously, a major disagreement between Chaudhury Arif and some senior trustees of the Centre gives an insight into the conflicting perceptions of Muslim motivations. Chaudhury Arif, of course, firmly believes that being able to assist a dozen boys get into IAS and allied services will have a greater relevance than the esoteric ambitions of quality research. But one of the eminent trustees was so incensed at the undermining of his lofty commitment that he seriously contemplated having the temporary buildings demolished!

While jobs and education for young Muslim men are still a major problem, young Muslim women are faced with the additional problem of getting married. Most of them are still too conservative to find husbands for themselves. In parts of the densely populated Old Delhi, the imbalance of out-of-work but substantially educated Muslim women and uneducated Muslim youths engaged from an early age in small business is such that reports abound of women taking to lives of easy virtue. No one speaks of it yet. And they won't because there is utter helplessness.

In Hyderabad poor families have found a practical but inhuman solution to their own poverty and their girls' forced spinsterhood. Over the past few years thousands of girls have been virtually sold to Arab visitors for anything between five and ten thousand rupees. Of course a proper *nikkah* takes place before the cash is handed over and the girl is taken away by the Arab. But what happens to these women ultimately is anyone's guess. No one raises a voice against this. How can you, without giving the poor families an alternative? "What's wrong, Babu, if a girl gets married to a particular person to provide for her family? And what if he is old, or lame or blind in one eye? What does it matter to a girl who is starving?" This was one Hashim who was working in a hotel in Delhi and had managed to get to the capital with the money he got for his sisters!

There may not be a nationwide renaissance but in a vast ocean of backwardness there are islands of endeavour which promise a brighter dawn. Aligarh and Jamia continue to provide a promise for thousands of young Muslim men and women. Muslims of South India lead a life of their own, in a manner of

speaking. The Al-Ameen Educational Society, Bangalore led by the charismatic Dr Mumtaz Ahmed Khan is a sprawling charitable enterprise whose educational activities cover an Arts, Science and Commerce College, College of Pharmacy, Evening Polytechnic, a scholarship fund, the Ghousia College of Engineering and several other schools and Industrial Training Institutes. In addition they have the Al-Ameen Hospital, Bangalore, an Athletic Club, the Manjupper Destitute Home and an Orphanage. The world of Al-Ameen is further buttressed by the Salar Press and its publications as well as the Amanath Cooperative Bank. An effort on this scale is extraordinary even for better placed communities. All this has come in the lifetime of the trustees. On a somewhat more modest scale at present, but with ambitious plans, is the All India Muslim Educational Society, Calicut. The sudden demise of its head, Dr Ghafoor, at a relatively young age, has caused a brief setback but their devotion and determination survives. Madras can boast of another effort in the Muslim Economic Forum and the Omeiet, and Andhra Pradesh has Sultanal-Ulem.

Amongst the Bohra community, both the loyal followers of His Holiness Syedna and the break away groups have established a vast network of educational and financial institutions. The Bombay Mercantile Cooperative Bank is the largest growing cooperative bank in the country drawing the cream of Muslim community for employment and investment. Similarly the Memon Jamaat in Bombay and the followers of Agha Khan have a close knit business world to match the best talents amongst Marwaris of Rajasthan.

Across Karnataka little towns like Belgaum, Dharwar, Bijapur and Karwar (North Kanara) have a series of Anjumans dating back to the *Khilafat* days. In Badkal, the soft spoken former Finance Minister of Karnataka, S.M. Yahya, leads a 4,000 member strong Anjuman Hami-e-Muslemeen dating back to 1919. It provides a rich variety of employment-oriented education and technical instruction.

In the north, the Hamdard Education Trust based in a splendid campus near Tughlakabad Fort, is very rapidly working its way towards a 'deemed' university status. In personnel, perceptions, environment and resources it can rightly claim a place

amongst the best institutions of its kind. Again it is the vision and perseverence of one man, Hakim Abdul Hamid Sahab, translated into reality with diligence and competence. In Patna, the Khuda Bakhsh Oriental Public Library, inspired by its untiring Director, Bedar, has acquired an unique niche in the field of Oriental scholarship.

But these are all only islands. They do not show up in employment lists—of public as well as private sectors. Muslims in the top echelons can be counted on finger tips. Muslims in lower jobs are far too few in refrence to their numbers. A bulk of them remain self-employed in skilled and unskilled trades, often at the mercy of rapidly and unpredictably changing patterns of trade and commerce. When the *Shah Bano* agitation was at its height and some vocal supporters of the 'divorced women's' cause enquired, "Is it too much to ask for five hundred rupees after exhausting the best part of your life with and for a man?" they did not pause to ask the supplementary: "How many Muslim men earn five hundred rupees a month?"

The alarmingly low rate of employment amongst Muslims is not entirely due to explicit discrimination. For instance, an interview for a Class IV government job might well go against a poor Muslim lad because of his inadequate appearance. How many interviewers would account for the congested and sparce living conditions from which the Muslim interviewer comes? For reasons of inadequate domestic infrastructure and historical alienation, education still does not find the priority it deserves. But in most places Muslim women are beginning to take the initiative to get the best education for their children. In Old Delhi, the Crescent Public School is a moving picture of first generation school children, charming and resolute, learning the ropes for a modern society. The old order is changing, though slowly.

Advancing education and gradual social mobility has certainly emancipated Muslims from certain behaviour unfairly associated with them. Polygamy, for instance, has figured prominently in the case against the recent legislation to protect the *Shariat*. But pilot studies done in Aligarh and Delhi have given the lie to the belief of widespread polygamy amongst Muslims. Indeed the National Commission on Women came to the interesting

conclusion that not only is polygamy on a sharp decline but the current figure for Muslim polygamy is considerably lower than polygamy amongst Hindus.

An unimaginable potential for Muslim self-reliance lies inert under the rotting files of the *Waqf* Boards of various states. In March 1976, the S.M.H. Burney Committee Report on *Waqfs* highlighted the usurped wealth of *Waqf* property which, in Delhi alone, would amount to thousands of crores of rupees. But *Waqf* Boards continue to be impoverished sources of meagre sustenance. Private and public institutions have with impunity encroached upon or even completely occupied prime *Waqf* property. If these properties or their reasonable income is given to the *Waqf* Board and the Board itself constituted to include outstanding professionals in the field of law, finance and accountancy, a major milestone in the history of Muslim reawakening could be reached.

It is apparent that Muslims do not intend to remain passive spectators of the captivating theatre of India's tryst with a new century. Their actions speak loud of their intention to be equal participants along the lines of Maulana Abul Kalam Azad's historic speech from the steps of Jama Masjid in August 1947:

> I am not asking you to seek certificates of loyalty out of fear of the ruling power or to live like camp-followers, as you did during the days of foreign domination. Let me remind you that some of the bright signs and symbols that you discern today in India as a heritage of the past were contributed by your own forefathers. Do not forget them. Do not forsake them. Live like their worthy inheritors. Realise that if you yourself are not willing to run away, no power on earth can make you do so. Come, let us take the pledge that this country is ours, that we belong to it and that fundamental decisions of its destiny will remain incomplete till we participate in them.

It is still too early to predict the exact shape that the participation will take. Every time a community stirs, or a revolution takes birth, hundreds of ripples send out their waves, clashing and joining alternatively. But the wave of change swells slowly.

Today, as we feel the surface rocking and rolling, Mr Rajiv Gandhi has made an historical gesture towards Muslims which may overcome all doubts and schisms. But at the same time, the United Minority Front, Jammat-e-Islami, Muslim League, Ittehadul Muslimeen, Muslim Majlis, Muslim Youth Convention, Students Islamic Organisation, Tameer Millat have taken upon themselves to capture Muslim sympathy with concerted opposition of the RSS, Ram Janambhoomi Mukti Morcha, Ekatmatha Yagna, Virat Hindu Sammelan, Bairaj Madhok, Bal Thackeray and their likes. On the other hand, forceful advocacy for a new social order amongst Indian Muslims has come from Anjuman-e-Tarraqipasand-Muslimeen, the Muslim Satyashodhak Mandal, Hindustan Muslim Andolan, using secularism as an offensive and aggressive ideology. These may be amusing or self satisfying preoccupations but the Indian Muslims do not want to be talked to. They wish to speak. They will follow the person who gives them dignity, safety and an opportunity to use their hands. With that person, and only that person, the Indian Muslim will feel at home.

Chapter Twenty-Four

CRITICAL CONVERSATIONS

I spoke about this book one evening to a young couple whom I have known as close friends for years. While I was explaining the theme, the wife, Anju interrupted me and said: "This is amazing. I felt you were becoming a Muslim spokesman. You are identifying yourself with Muslims, which you did not when you returned from Oxford!"

"What apart from the book, gave you that idea?" I enquired in amused curiosity. Her reply was a little startling.

"Do you remember when we came to see you after Operation Bluestar. You said something like 'at least *they* won't blame *us* this time'."

To Anju the first time I used *us* for Muslims was the beginning of a slippery slope; my writing the book, a clear indication that I was merrily skiing down a descent she considered disastrous.

"But why Muslims? Why not others? Why at this point in time?" Anju was obviously getting excited at the possibility of delivering a quick knock out punch to an ill prepared position of communalism. To me the answer was stark and simple. Muslims are under attack. The *Shariat*'s validity is being questioned.... She was on a different point.

"But why must *you* take up for Muslims?"

For the simple reason that nobody else will. I had understandably not made a great impact as yet, because Anju paid scant attention to my replies.

"But surely you do not think that a 75 year old woman (Shah Bano) should go without sustenance?" Anju continued.

This thrust of aggression was not unexpected. So I replied, "All right, if it is Shah Bano who worries you, listen to this. Do you know what Muslims are basically saying? They are saying that before you condemn the *Shariat* as being unfair please see what it has to offer. In fact the *Shariat* offers more than Section

125. The question is not whether Shah Bano gets maintenance. It is whether a husband should provide maintenance or a father, brother, etc."

Anju was beginning to show signs of concentration. "But the poor woman was only asking for what every woman should be equally entitled to get." She was still on the same track.

I agreed with that but suggested that the argument be taken in stages: "(1) Take a 75-year old Muslim divorcee and a 75-year old Hindu divorcee. They are equal and, therefore, require equal treatment. (2) The Muslim woman has received *mehr* but the Hindu woman has not. Therefore, they are not strictly equal."

At this point the husband, Pravin, interjected.

"But what if the *mehr* is nominal only, as it is in many cases? Besides, isn't *mehr* paid upon marriage?"

He had brought the discussion to the central question. The Supreme Court had floundered just there. If I could answer that one I would have them both on my ground.

"*Mehr*," I volunteered to explain, "may be a payment in consideration of marriage but in fact in Muslim families no actual payment is made during wedlock. It is only upon divorce that the question arises. But so far as the quantum of *mehr* is concerned it should be compatible with the status of the husband. If in a particular case that is not so there may be justification to think about finding a way of making it reasonable. But *Shah Bano* (the SC judgment in the case not the person) makes a choice of who is the right person to provide maintenance and picks the husband. Why? Perhaps as a punishment for divorce. But what then becomes of the modern approach of no fault doctrine of divorce?"

With that *Shah Bano* took a curtain call and bowed out of the conversation. In any case it has been talked about ad-*nauseum* in most homes and I distinctly felt that even to Pravin and Anju it was a stale subject.

Anju had rearranged her thoughts and opened another front.

"But why should you take up just the Muslim cause?" There are so many other people with problems—the poor, for instance."

Now what does one say to that? I would certainly like to speak for the poor. But would that be enough? An answer had

to be furnished to Anju's question if Muslim spokesmanship was to be justified. "Look there are identifiable groups in society. We have our groups as well. Each group, either as a caste or a region or on the basis of some other attribute, finds expression through a leader. But Muslims have none."

"But must they have a separate leader?" Anju's doubts persisted.

"Yes. Because Thakurs and Brahmins and Marathas and Kammas and Jats and Sikhs have them. In fact since Independence the only substantial community which has deliberately steered clear from creating its own leadership is the Muslim community. The rationale obviously was that the quest for a leader in the past proved disastrous. So we should be vigilant. We should make do with sympathetic majority leadership. So Jawaharlal and Indira were then enough. Now perceptions are changing. Perhaps certain imponderables are at play."

I was obviously taking Anju into bewildering country.

"What makes you think Muslims are discriminated against? Perhaps it is a political ruse of people trying to get leadership?" We were now in the bull's eye.

"Can't you see my point?" I asked her. "A Muslim cannot employ a Muslim without the charge of communalism being levied against him. Now, just take my book. My writing it makes you apprehensive. And you are not even a conventional orthodox or communal person."

Anju had not seen discrimination up close so my statement did not mean much to her at that moment.

"I have lots of Muslim friends. They have never spoken about discrimination," was her pat rejoinder.

The issue now required a complete churning. "They never will. Muslims have accepted the role they have to play to avoid constant unpleasantness. But barring a handful whom you could count on your fingertips—the progressive Muslims—take any Muslim at random and place him in a room with other Muslims or people he trusts. You will then hear the things to be said. Things which will shock you."

Anju was not quite convinced.

"But are you saying that you have felt discriminated against?" she demanded.

"No, never. But I am honest enough to admit that I have the good fortune of belonging to a small class of well educated and conveniently placed Muslims. In most fields we do not suffer disadvantages. We possibly even have an advantage in being symbolic successes of the community. But that does not mean that the ordinary Muslim does not suffer. Okay. Speak of good jobs.... the IAS. The answer would be: 'If Muslims don't sit for the exam how do we take them?' The same for the police and the army. But what about jobs of clerks and peons. Why can't Muslims get those jobs?'

"But you may have the percentage of jobs commensurate with the population...." Anju was beginning to doubt the impregnable argument she had started with.

"Percentages speak loudly for us. In many cases I am not saying that discrimination is conscious or deliberate. I think those days are gone or fast going. In any case, conscious discrimination can be identified and curbed. But the real problem comes from unconscious discrimination."

"Take me, for instance," Anju said, "I don't care who is what. I consider myself Hindu because I happened to be born one. My children will have the choice when they grow up."

"That is precisely how unconscious discrimination is perpetuated", I explained. When you remain neutral in a fight between the weak and the strong you indirectly help the strong.

"But you still haven't shown where the communal reaction manifests itself," she came back.

To which I returned: "Just look around. Do you know that a Muslim restaurant was closed in Jor Bagh because some people said they threw bones into neighbouring houses. Do you know that a group of hired agitators shouted slogans as Justice Fazl Ali's mortal remains were brought to the Jor Bagh Karbala for burial? Isn't that sickening?"

Anju was beginning to see the light. But there were still a million questions which perplexed her.

"Why should Muslims single themselves out? There are other minorities, Sikhs, Parsees, Christians *et al.*" Could she not see the difference?

"To begin with none of those minorities are as impoverished as Muslims. They have pockets of existence while Muslims are

more widely dispersed. Sikhs have virtually a state to themselves. Then again, these minorities are too small to be in conflict with majority interest. Curiously, any one from these communities helping their kin are not automatically labelled communal. Finally, of course, Muslims as a community have been devastated, truncated by Partition. Their resource bank, talent bank and cultural cream went to Pakistan. They have had to rebuild from shattered foundations. And whenever they have a measure of success communal riots put things back a few years."

The talk of communal riots brought Pravin to life. He recounted an incident relating to the infamous November 1984 riots.

"We saved a Sikh by hiding him in our home. We would have done the same for a Muslim. So how can it be said that Hindus were against Sikhs or that they are anti-Muslims?"

What could I say? "The one who was saved will not be able to compensate for the thousands who perished. Just as your resolve to save a Muslim too does not save them in Bhiwandi, Ahmedabad, Baroda. Ultimately what can you say about the thousands who continue to die at the hands of killers?"

I had succeeded in getting Anju and Pravin to begin to ponder over the problem. But they still couldn't reconcile with the idea of my speaking as a Muslim. So it was my turn to change the direction of the discussion. "I am not speaking for Muslims as followers of a religion. I am speaking for them as an identifiable group of citizens whose descriptive attributes include a particular religion or language, etc."

"But how can you divorce the two?" I was asked.

"Just as Gandhi and Jinnah did it. Jinnah was a secular person in personal attributes who was able to lead the movement for a Muslim state. Gandhi, on the other hand, was a very Hindu person, who was able to use Hindu concepts like *ahimsa* and asceticism to launch a secular movement in which Muslims, Sikhs, Parsees and Christians embraced those concepts for political action."

"But," Anju went back to her initial concern, "you are bound to be misunderstood if you speak only for Muslims. We are not Hindu in a sense but we were both a little taken aback. What would you expect of an orthodox person?"

What would I expect? "That is why I have been at pains to

explain that the prevalent view of secularism is spurious. According to it: 'A Hindu has to be pro-Muslim to be secular. And a Muslim has to be anti-Muslim to be secular.' This must stop. My word should be taken at face value, as that of any Indian."

"But is it not?"

"No, it isn't. I can't speak on some subjects without being misunderstood. Pakistan is one. Muslims, especially of north India, have made a great sacrifice in parting with their families who went to Pakistan. We have fought against our relations. We have perhaps even killed them for our nation. But we are still not trusted."

Something clicked for Anju. She was converted. "God! You are right. A friend of our family who is now in Canada left the army because aspersions were cast on his loyalty. And he had served with exceptional devotion."

Ultimately it was Anju's experience which helped her understand what I was saying. Equally it was her lack of experience which caused her to take so long to understand.

"What will you do about them?" asked Pravin.

"I will just have to keep trying till I get exhausted. At the same time I have to speak also to the community for which I have chosen to speak. My communication with them has to be a two-way enterprise. I have to reach out to them with words and acts they appreciate, even if at times my own beliefs are different. This is the first step towards mutual confidence. If I have the confidence I can sensibly guide them too."

"But then you may be saying some unpalatable things."

"Indeed. You will just have to understand. That is the only hope of keeping channels of communication open. But the exercise has its inherent dangers. One has to play a game. But one has to ensure that he does not lose the mooring in rationality. The rhetoric of minority politics is very powerful. A leader can begin to believe that it is all true."

Anju and Pravin will undoubtedly think about our conversation. There may be more questions. But so long as there is trust, the answers will be found. But once trust disappears, for whatever reason, each question will become an allegation, each answer a confirmation of guilt. It was the trust between us

which, in a sense, permitted the parting question by Anju.

"Are the non-Muslims in Pakistan treated better?"

But even as she asked that question, Anju betrayed her instant acceptance of its hopelessness.

"Must I be treated in terms of someone somewhere else? Am I not entitled to treatment as an Indian and as a human being?"

Anju and Pravin were both a little surprised by the forthrightness of my reaction. They recovered their poise by emphasising their own free thinking: "Look at us. We celebrate Christmas because it is fun. When we stand in prayer it is invariably a Western invocation that comes to mind. Our son is called Sahil. So, how much of us remains Hindu? What keeps a Muslim from adopting a similar life?"

What indeed. As I told them, they had a choice. "You do not feel that there is pressure for change. Besides with all your freewheeling, you will not feel threatened in identity, ever.... But it is totally different for a minority. I can lose my identity in a gesture. I can lose my community's confidence in a phrase."

"But why must you worry about your community?" Pravin enquired.

"Somebody must."

APPENDIX

Bill No. 10-C of 1986
THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) BILL, 1986

A

BILL

to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

1. **Short title and extent.** (*1*) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act, 1986.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

2. **Definitions.** In this Act, unless the context otherwise requires,—

(*a*) "divorced woman" means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(*b*) "iddat period" means, in the case of a divorced woman,—

(*i*) three menstrual courses after the date of divorce, if she is subject to menstruation;

(*ii*) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(*c*) "Magistrate" means a Magistrate of the First class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the divorced woman resides;

(*d*) "prescribed" means prescribed by rules made under this Act.

***Mahr* or other properties of Muslim woman to be given to her at the time of divorce.** (*1*) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to–

(*a*) a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband;

(*b*) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(*c*) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(*d*) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(*2*) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in clause (*d*) of sub-section (*1*) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or dower or the delivery of properties, as the case may be.

(*3*) Where an application has been made under sub-section (*2*) by a divorced woman, the Magistrate may, if he is satisfied that–

(*a*) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children; or

(*b*) the amount equal to the sum of *mahr* or dower has not been paid or that the properties referred to in clause (*d*) of sub-section (*1*) have not been delivered to her.

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman

as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such *mahr* or dower or the delivery of such properties referred to in clause (*d*) of sub-section (*1*) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(*4*) If any person against whom an order has been made under sub-section (*3*) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. **Order for payment of maintenance.** (*1*) Notwithstanding anything contained in the forgoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay

such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(*2*) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (*1*) or such realtives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the proviso to sub-section (*1*), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (*1*) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. **Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974.** If, on the date of the first hearing of the application under sub-section (*2*) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974), and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation—For the purpose of this section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

6. **Power to make rules.** (*1*) The Central Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular and without prejudice to the foregoing power, such rules may provide for—

(*a*) the form of the affidavit or other declaration in writing to be filed under section 5;

(*b*) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;

(*c*) any other matter which is required to be or may be prescribed.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. **Transitional provisions.** Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974), pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.

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